

**WEB IMPACT INC.
SOFTWARE END USER LICENSE AGREEMENT**

THIS SOFTWARE END USER LICENSE AGREEMENT (THE "AGREEMENT") IS A LEGAL AGREEMENT BETWEEN WEB IMPACT INC. ("WEB IMPACT") AND THE PERSON, COMPANY, OR ORGANIZATION ("CUSTOMER") THAT HAS LICENSED THE SOFTWARE LISTED IN THE ORDER FORM AND/OR THE THIRD PARTY AGREEMENT REFERENCING THIS AGREEMENT (THE "SOFTWARE"). BY EXECUTING THE ORDER FORM AND/OR THE THIRD PARTY AGREEMENT REFERENCING THIS AGREEMENT, CUSTOMER ACCEPTS THE SOFTWARE AND AGREES TO THE TERMS OF THIS AGREEMENT. READ IT CAREFULLY BEFORE EXECUTING THE ORDER FORM AND/OR THE THIRD PARTY AGREEMENT REFERENCING THIS AGREEMENT. BY EXECUTING THE ORDER FORM AND/OR THE THIRD PARTY AGREEMENT REFERENCING THIS AGREEMENT, CUSTOMER IS CONFIRMING CUSTOMER'S ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT.

1. Definitions

In this Agreement, the following capitalized terms shall have the following meanings:

"Agreement" means this Web Impact Inc. - Software End User License Agreement;

"Bundle" means the Software, together with Third Party Software, if any, distributed with the Software

"Customer" means the end user of the Software that acquires the License pursuant to this Agreement, as identified on the Order Form and/or Third Party Agreement;

"License" has the meaning attributed to such term in Section 2(a) of this Agreement;

"Reseller" means an authorized reseller or distributor of Web Impact, which has been authorized to distribute Software on behalf of Web Impact either as a stand-alone software product or as part of a Bundle, whether integrated or not;

"Software" means the Web Impact Software Product(s), Business Application(s), and Technology Solution(s) described in the Order Form and/or the Third Party Agreement referencing this Agreement and supplied by Web Impact herewith, and corresponding Updates and documentation;

"Order Form" means a standard order form for the acquisition of the Software by the Customer from Web Impact or a Reseller, which shall create a binding agreement between Web Impact and Customer and which incorporates by reference the terms of this Agreement;

"Support Services" means those support services offered by Web Impact and subscribed to by the Customer which are designed to support the Software in accordance with Web Impacts Software Support Services Terms and Conditions in effect on the date Support Services are rendered;

"Territory" means the Territory as defined in the Order Form and if no Territory is so defined in the Order Form, "Territory" shall mean Canada;

"Third Party Software" means any software, documentation, content, frameworks, services, other offerings, components and/or materials provided with the Software as a Bundle or otherwise, which has been produced and/or licensed by a third party and subsequently provided and/or made available and/or licensed to Web Impact by such third party for inclusion with the Software and which is not directly licensed by such third party to the Customer, whether by way of license agreement, shrink-wrap agreement, click-wrap agreement or otherwise;

"Third Party Agreement" means any agreement entered into between the Customer and a Reseller pursuant to which the Software is licensed.

"Updates" means any bug fixes, error corrections, enhancements, alternations, new releases and/or new versions of the Software and related documentation which Web Impact may supply from time to time to its Customers generally as part of Support Services; and

"Web Impact" means Web Impact, Inc. and its licensors, if any.

2. License and Software Rights

(a) *Grant of License.* Web Impact hereby grants to Customer a non-exclusive, non-transferable, non-sub-licensable, limited license to use the Software in the Territory solely for Customer's own internal business purposes on one or more servers and/or workstations located at facilities owned or leased by the Customer, subject to the terms and conditions of this Agreement and any restrictions on use of the Software as contained in the Order Form(s) and/or the Third Party Agreement(s) ("License"). The Customer is expressly prohibited from renting, leasing or otherwise distributing copies of the Software. This Agreement is entered into between Web Impact and the Customer.

(b) *Software Usage Scope.* Customer may expand scope of use of the Software as defined in an Order Form(s) and/or a Third Party Agreement(s) by executing a subsequent and/or additional Order Form(s) and/or Third Party Agreement(s) wherein the Customer's scope of use of the Software is expanded. Any such Order Form(s) and/or Third Party Agreement(s) must be duly executed by the parties and the Customer shall pay all additional fees payable pursuant to such Order Form(s) and/or Third Party Agreements.

(c) *Support Services.* Subject to payment by Customer in advance of all support services fees, Web Impact will provide to Customer support services for the Software in accordance with Web Impact's then-current Software Support Services Terms and Conditions. Web Impact will provide Support Services only for the most current and next most current release of the Software.

(d) *Resellers and Distributors.* The Software may be acquired by the Customer placing an order for the Software directly with Web Impact through a designated Order Form and/or placing an order through an authorized Reseller using the designated Order Form. In all cases, this Agreement shall govern the usage of the Software directly with the Customer. This Agreement is between the Customer and Web Impact directly.

3. License Restrictions

(a) *Limitation on Reproduction.* The Customer shall not copy (except as provided for in Section 2(a) of this Agreement), reproduce or distribute copies of the Software, or electronically transfer the Software from one computer to another over a network, without the express prior written consent of Web Impact.

(b) *Reverse Engineering, etc.* The Customer shall not alter (except as expressly set forth in Section 2(d) above), merge, adapt or translate the Software, or decrypt, decompile, reverse engineer, reverse assemble, disassemble, or otherwise reduce the Software or any portion thereof to a human-perceivable form. The Customer shall not modify (except as expressly set forth in Section 2(d) above), adapt, translate, reverse engineer, decompile, decrypt, disassemble, or create derivative works based on the Software for any purpose or reason, including without limitation, for further licensing or sale. The Customer shall not use the Software to develop or create new applications, modules, products or services.

(c) *Assignment.* The Customer may not assign, rent, lease, or sublicense the Software.

(d) *Export.* The Customer may not export the Software into any country prohibited by applicable exports laws and regulations.

(e) *Bundle.* The license of the Bundle is licensed as a single product and none of the products in the Bundle, including the Software, may be separated for installation or used on more than one computer. All Third Party Software shall be used solely with the Software in accordance with the terms of this Agreement.

(f) *Right to Audit.* Web Impact may audit the Customer's use of the Software for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by the Customer other than in full compliance with the terms of this Agreement, the Customer shall reimburse Web Impact for all reasonable expenses related to such audit in addition to any other liabilities incurred as a result of such non-compliance.

(g) *Resale.* The Customer shall not directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Software, or any portion thereof, for third party use, third party training, facilities management, time-sharing, use as an application service provider, or service bureau use.

(h) *Other Restrictions.* The Customer shall: (i) not use any portion of the Software delivered by Web Impact which has not been licensed and paid for by the Customer, (ii) not reproduce, disclose or

publish performance benchmark results for the Software, (iii) only access the Software through APIs documented by Web Impact and (iv) not transfer the Software to a different database platform or operating environment without the prior written consent of Web Impact.

4. Protection of Proprietary Material

(a) *Ownership.* The foregoing license grants to the Customer a limited license to use the Software. Except as expressly provided in this Agreement, Web Impact and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software (as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications you may develop), and all copies thereof and all modifications (if any) made thereto and all modifications made to the Software (including, without limitation, modifications to Custom Module Code). All rights not specifically granted in this Agreement are reserved by Web Impact and its suppliers.

(b) *Intellectual Property.* An express condition of this Agreement is that Web Impact retains all intellectual property rights in the Software and any other component developed by Web Impact to allow the Software to operate in any setting, including but not limited to the title and ownership of the Software and regardless of the form of media in or on which the original and other copies may exist. The Software is licensed not sold under any circumstances or interpretation of this or any other agreement and all intellectual property and other ownership rights in the Software and other Web Impact developed components, at any time in the past, present, and the future belong to Web Impact. This Software, Web Impact developed components, and the accompanying materials are copyrighted by Web Impact.

(c) *Unauthorized Reproduction of Software.* Unauthorized copying of the Software or other Web Impact developed components, including Software or component that has been modified (except as provided in Section 2(b) of this Agreement), merged, or included with other Software, or of the written materials is expressly forbidden. The Customer shall not remove the copyright notices from the Software. The Customer also agrees to prevent any unauthorized copying of the Software in all manners.

(d) *Other License Agreements.* Some components, tools, subsystems, or code in the Software may be sublicensed from other vendors and incorporated into the Software under OEM or other agreements, in which case the license agreements to those components are valid and binding and may be contained in the software either in print or digital formats, which shall not be removed.

5. Term and Termination

(a) *Term.* This Agreement takes effect on the Effective Date as defined in the Order Form(s) and/or the Third Party Agreement(s) and shall remain in effect for the Term as defined in the Order Form unless terminated as provided herein. If the use of the Software precedes the execution of the Order Form and/or the Third Party Agreement, this Agreement governs the usage of the Software retrospectively from the date of first usage of the Software by the Customer and Customer confirms that such use of the Software is governed by the terms of this Agreement.

(b) *Termination.* Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party breaches any material provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from non-breaching party.

(c) *Consequences of Termination.* Within (5) days after termination of this Agreement, the Customer shall, at Web Impact's election, deliver or destroy all copies of the Software within its possession, custody or control (with all other rights of both parties and all other provisions of this Agreement surviving any such termination) and a senior office of the Customer shall certify in writing the delivery or destruction of all such copies.

6. Limited Warranty and Disclaimer

(a) Web Impact warrants that, for a period of ninety (90) days from the date of delivery (as evidenced by a copy of your receipt): (i) when used with a recommended hardware configuration and in the manner prescribed in the documentation and instructions, the Software (except in respect of the Custom Module Code) will perform in substantial conformance with the documentation supplied with the Software; and (ii) the physical media on which the Software is furnished will be free from defects in materials and workmanship under normal use. The foregoing warranty is conditional on: (a) Customer remaining a compliant, continuous subscriber to Support Services and having installed all Updates; (b) any error or

defect detected is reproducible by Web Impact; (c) the performance issue, error or defect not relating to Third Party Software; and (d) Customer notifying Web Impact of such nonconformance within the warranty period. WEB IMPACT DOES NOT WARRANT THAT ALL SOFTWARE ERRORS CAN OR WILL BE CORRECTED.

(b) WEB IMPACT PROVIDES NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, FOR THE CUSTOM MODULE CODE. THE CUSTOM MODULE CODE IS PROVIDED "AS IS".

(c) EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY WITH RESPECT TO SOFTWARE, WEB IMPACT AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO, THERE IS NO WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. WEB IMPACT DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. WEB IMPACT SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR CONDITIONS OF FITNESS FOR SUCH PURPOSES.

(d) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF DELIVERY.

(e) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WEB IMPACT, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

(f) SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

7. Exclusive Remedy

Web Impact will, at its sole option, and provided the Customer otherwise complies with the terms of this Agreement, (i) repair or replace the nonconforming Software within a commercially reasonable time period after receiving notice from the Customer Licensee of such nonconformance, or (ii) refund the amounts paid by the Customer for the nonconforming Software module upon receipt of the Software, and the execution of an amendment by the Customer pursuant to which the license for the Software module for which the Customer is receiving a refund is terminated. THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE CUSTOMER FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND RELATED DOCUMENTATION.

8. Limitation of Liability

(a) NEITHER WEB IMPACT NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF WEB IMPACT OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) WEB IMPACT'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE GREATER OF \$500 OR THE AMOUNT PAID BY

CUSTOMER IN THE LAST NINETY (90) DAYS FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE.

(c) SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

(d) THE FOREGOING LIMITATIONS ON LIABILITY ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT.

(e) THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION. THE CUSTOMER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE FEES CHARGED FOR THE SOFTWARE AND SERVICES WOULD BE HIGHER.

9. Basis of Bargain

The Limited Warranty and Disclaimer, Exclusive Remedies and Limitation of Liability set forth above are fundamental elements of the basis of the Agreement between the Customer and Web Impact. Web Impact would not be able to provide the Software on an economic basis without such limitations. Such Limited Warranty and Disclaimer, Exclusive Remedies and Limitation of Liability inure to the benefit of Web Impact's licensors.

10. Third Party Software

The Customer acknowledges and agrees that, notwithstanding any other provision hereof, Web Impact makes no warranties whatsoever with respect to Third Party Software. The Customer's rights and obligations with respect to such Third Party Software may be governed by the terms of a separate and/or supplementary license agreement, which may be provided and/or made available by Web Impact.

Where Software contains such Third Party Software, notices and/or additional terms and conditions are required. Such required Third Party Software notices and/or additional terms and conditions are located in the appropriate places in the Software and/or at <http://www.webimpact.com/agreements> and are made a part of and incorporated by reference into this Agreement. By accepting this Agreement, the Customer is also accepting the additional terms and conditions, if any, set forth therein.

WEB IMPACT MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO THE THIRD PARTY SOFTWARE, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, MERCHANTABLE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, TO THE EXTENT PERMITTED BY APPLICABLE LAW, WEB IMPACT SHALL NOT HAVE ANY LIABILITY WHATSOEVER ARISING OUT OF OR IN RELATION TO THE THIRD PARTY SOFTWARE.

11. Payments

(a) *Fees.* The Customer agrees to pay all license fees, annual Support Services fees, and any other fees that are associated with acquiring and using the Software as described in the Order Form. All payment are due within thirty (30) days after the date of the invoice issued by Web Impact. All overdue payments shall bear interest at a rate equal to the lesser of: (i) eighteen percent (18%) per annum and (ii) the maximum interest rate allowed under applicable law. Excluding taxes based on Web Impact's income, the Customer is liable for all taxes, duties and customs fees relating to the Software, Documentation, and/ or Services whether or not Web Impact invoices the Customer for such taxes, duties or customs fees.

(b) *Customer Responsibilities.* The Customer is responsible for purchase or other acquisition of other software and hardware needed to successfully run the Software, such as operating system software, database software, application software, server hardware, Internet connection, hosting infrastructure, or other components as maybe required for the proper operation of the Software.

12. Responsibility for Content

The Customer agrees that it is solely responsible for the content of all visual, written, audible, or content in any form whatsoever that is stored, relayed, communicated using the Software or any Web Impact developed component or software. The Customer agrees that it shall not use the Software to send unsolicited emails outside the Customer's organization. The Customer further agrees not to use the Software or services to communicate, store, or allow to be transmitted or stored any content that is harassing, libelous, threatening, obscene, would violate the intellectual property rights of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offence, under any applicable law or regulation.

13. General

(a) *Governing Law.* This Agreement shall be governed by the laws of the Province of Ontario, Canada, without giving effect to principles of conflict of laws. The Customer hereby consents to the non-exclusive jurisdiction and venue of the courts sitting in Ontario, Canada to resolve any disputes arising under this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

(b) *Entire Agreement and Waiver.* This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. The Customer agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by the Customer in relation to the subject matter of this Agreement shall be of no force or effect. The failure or delay of Web Impact to exercise any of its rights under this Agreement or upon any breach of this Agreement shall not be deemed a waiver of those rights or of the breach.

(c) *Amendment.* No amendments or modifications may be made to this Agreement except in writing signed by both parties. No Web Impact dealer, agent or employee is authorized to make any amendment to this Agreement.

(d) *Survival.* If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

(e) *Headings.* Titles and headings contained in this Agreement are for reference purposes only and shall not be used in the interpretation of this Agreement.

(f) *Force Majeure.* Web Impact shall not be liable for any delay or failure in performance due to Force Majeure, which shall mean acts of God, earthquake, labor disputes, changes in law, regulation or government policy, riots, war, fire, epidemics, acts or omissions of vendors or suppliers, terrorism, power failures, internet interruption, transportation difficulties or other occurrences which are beyond Web Impact's reasonable control. In the event that Web Impact is prevented or delayed in the delivery or implementation of the Software or from providing any services in relation to the Software for reasons beyond its control, such delivery or implementation or provision of services shall take place as soon thereafter as is reasonably possible.

(g) *Notices.* Any notice or other document required or permitted to be given hereunder shall be validly given if delivered personally, by courier service, by prepaid registered mail or facsimile transmission to the addressee thereof. Notices shall be deemed received three (3) days after mailing in the case of certified mail, and on the next business day in the case of courier delivery or facsimile transmission, except a notice of termination which is governed by Section 5(b). Notices shall be sent to the Customer at the address specified on the Order Form. Notices shall be sent to Web Impact as follows: Web Impact Inc., 99 Atlantic Ave., Suite 200, Toronto, Ontario, Canada, M6K 3J8, Attention: President.

(h) *Contact.* All questions concerning this Agreement shall be directed to: Web Impact Inc., 99 Atlantic Ave., Suite 200, Toronto, Ontario, Canada, M6K 3J8, Attention: President.

(i) *Enurement and Assignment.* This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and legal representatives, provided, however, the rights and obligations of the Customer hereunder may not be assigned, sublicensed or otherwise

transferred, in whole or in part, without the prior written consent of Web Impact, which may be granted or withheld by Web Impact in its sole and absolute discretion and any purported assignment, sublicense or other transfer, without such prior written consent shall be null and void. This Agreement may be assigned by Web Impact without notice or consent by the Customer.

(j) *Language.* This Agreement has been drawn up in English at the express wish of the parties. Le présent contrat a été rédigé en anglais à la demande expresse des parties.

Web Impact, PRISM, and other trademarks contained in the Software are trade-marks of Web Impact Inc. in Canada, the United States and/or other countries. Third party trade-marks, trade names, product names and logos may be the trade-marks of their respective owners. You may not remove or alter any trade-mark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation. This Agreement does not authorize the Customer to use Web Impact's or its licensors' names or any of their respective trade-marks, trade names, product names and/or logos.