

WEB IMPACT HOSTING AGREEMENT

THIS HOSTING AGREEMENT (THE "AGREEMENT") IS A LEGAL AGREEMENT BETWEEN WEB IMPACT INC. ("WEB IMPACT") AND THE PERSON, COMPANY, OR ORGANIZATION ("CUSTOMER") THAT HAS SUBSCRIBED TO THE HOSTING SERVICE PURSUANT TO THE ORDER FORM OR THIRD PARTY AGREEMENT REFERENCING THIS AGREEMENT. BY EXECUTING THE ORDER FORM OR THIRD PARTY AGREEMENT REFERENCING THIS AGREEMENT, AS THE CASE MAY BE, CUSTOMER ACCEPTS THE TERMS OF THIS AGREEMENT. READ IT CAREFULLY BEFORE EXECUTING THE ORDER FORM REFERENCING THIS AGREEMENT. BY EXECUTING THE ORDER FORM OR THIRD PARTY AGREEMENT REFERENCING THIS AGREEMENT, CUSTOMER IS CONFIRMING CUSTOMER'S AGREEMENT TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT.

Web Impact ("The Company") shall ensure that the Hosting Service is provisioned according to the following performance standards:

1. Service Standards:

The Services shall be available twenty-four (24) hours per day seven (7) days per week. The Services generally achieves a weekly up-time level of ninety-nine point nine percent (99%) ("Uptime"). For purposes of calculating actual Uptime in order to determine its conformity to the above referenced level, the following formula shall be used:

$$\text{Uptime (expressed as a percentage)} = \frac{43200 - \text{Downtime in minutes}}{43200}$$

2. Definitions:

For purposes of the formula set forth above, the following definitions shall apply:

"Downtime" shall mean that period of time per day for which the Services are unavailable or unusable. The Services shall be considered unavailable or unusable if: (i) the Services cannot be accessed by Client (ii) response time is unacceptable which shall be mutually determined; or (iv) Client cannot access the Services for any period of time. Downtime for any incident shall commence at the time Client makes a bona fide attempt to contact Company by telephone or through an email to the support email address or otherwise to report a problem and shall end when Company restores such Services to satisfactory working order.

3. Exceptions to Service Level:

Downtime shall not include, and expressly excludes, routine and emergency maintenance undertaken by the Company to ensure improved state of application services provided that Client is notified of any scheduled maintenance in advance; outages caused by the Client's use /misuse of services causing server overutilisation; Force Majeure and any other events beyond the Company's reasonable control.

4. Service Credits:

The Company shall credit to the client up to 50% of the monthly fees owing under this agreement if during the calendar month, the service suffers downtime of 1% over the course of the consecutive period during the month. The guarantee only covers downtime caused by factors not related to service over utilization and more specifically as a result of network or server problems.

5. Termination Rights.

The Customer will have the right to terminate its commitment to purchase a particular affected Service (whether reflected in an Order Form, Addendum or otherwise) on 15 days written notice if failure to achieve the Service Levels for such affected Service occurs 10 times in a thirty day period or 15 times in a sixty day period; provided, however that such notice must be delivered within 10 days of the date on which the last failure occurred.

4. 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 any work performed by Web Impact will perform in substantial conformance with the instructions received from you and the documentation and/or instructions supplied to you; and (ii) the physical media on which the work-product is furnished will be free from defects in materials and workmanship under normal use. Unless otherwise agreed upon in writing, all work product and methods are the intellectual property of the Company.

(b) WEB IMPACT PROVIDES NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, FOR THE CUSTOM MODULE CODE OR FOR ANY OTHER WORK PRODUCED FOR YOU. ALL WORK PERFORMED AND ALL WORK PRODUCT IS PERFORMED AND DELIVERED ON AN "AS IS" BASIS.

(c) EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY WITH RESPECT TO WORK PERFORMED BY WEB IMPACT OR ITS SUPPLIERS, WEB IMPACT AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF 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 WORK PRODUCT THAT IS THE OUTCOME OF ITS WORK IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. WEB IMPACT SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

(d) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE WORK PERFORMED OR THE WORK PRODUCT, 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.

5. 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, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE WORK PRODUCT 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 YOU IN THE LAST NINETY (90) DAYS FOR THE WORK 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.

6. Ownership and Intellectual Property, etc.

- a. All Materials provided by the Customer shall remain the property of the Customer or its third party licensors.
- b. Any components of the Project(s) or work product including, without limitation, text, logo's, graphics, drawings, illustrations, charts, information tables, audio, video, database construction, software, intellectual property, or other work that are created by or for the Customer exclusively shall be owned by the Customer, provided that such is specifically catalogued and agreed upon prior to the start of the work by the Company.
- c. Any intellectual property, processes, or proprietary software that is owned, developed by the Company or licensed by the Company from a third party and used in the delivery of the work or work product, shall be and remain the property of the Company or its third party licensor.
- d. The Customer has no right to make copies of any intellectual property, processes, or proprietary software, or derivatives thereof, in whole or in part, or to sell, transfer, assign, reverse engineer, transmit, distribute, download or otherwise convey the Company's materials, intellectual property or processes, or proprietary software without the express written consent of the Company.

7. Other Provisions

- a. For a period of 18 months after the termination of all agreements between the parties, the Customer shall not solicit, hire, or accept solicitation of employment or contract work from employees, former employees, agents, former agents, contractors, and/or former contractors of the Company who were employed by the Company at the time you and the Company were doing business together, without the prior express written permission of the Company.
- b. The Company and the Customer shall have the right to use elements of the Project for its own promotional use and publicity.
- c. If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, the remaining provisions thereof shall nevertheless be valid, binding subsisting.
- d. This Agreement shall enure to the benefit of, and be binding upon, the respective successors, permitted assigns, heirs, executors, administrators and legal and personal representatives of the parties hereto. This Agreement may not be assigned by the Customer without the prior written consent of the Company, except to an assignee which is the successor to or assignee of all or substantially all of the undertaking business and assets of Recipient.
- e. The parties hereto shall with reasonable diligence do all such things and provide all such further and other assurances as may reasonably be required in order to give effect to the purpose and intent of this Agreement and to carry out the provisions hereof.
- f. The Company 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 the Company's reasonable control. In the event that the Company is prevented or delayed in the delivery or installation of the Software or Services for reasons beyond its control, such delivery or installation shall take place as soon thereafter as is reasonably possible.

g. This agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any prior undertakings, written or oral. No waiver of any provision hereof shall be deemed to or shall constitute a waiver of any other provision, nor shall any such waiver constitute a continuing waiver, unless otherwise agreed to in writing. No amendment or termination hereof shall be binding unless agreed to in writing by both parties.

h. This agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the courts of Ontario shall have jurisdiction to entertain any action arising hereunder.

i. The Company and the Customer are independent contractors, and nothing in this Agreement will be constructed so as to create a relationship of employer-employee, principal and agent, partnership or joint venture. It is hereby acknowledged that the Company is not the publisher of the Customer websites or any other material, but is only assisting the Customer in achieving the Customer goals .

j. Both parties agree in good faith to seek alternative means of solving disputes to the best of their abilities prior to engaging in any legal suits in relation to any disputes.

k. The Customer and the Company agree, by signing below, that each has read and understood these Terms and Conditions and agree to comply with same.

l. The warranties, representations, restrictions, limitation of liability, and indemnities under this Agreement shall survive the expiration or termination of this Agreement.
