

WEB IMPACT PROFESSIONAL SERVICES AGREEMENT

IMPORTANT: THIS AGREEMENT (or "PSA") IS A LEGAL AGREEMENT BETWEEN WEB IMPACT INC. ("WEB IMPACT") AND THE PERSON, COMPANY, OR ORGANIZATION THAT HAS LICENSED SOFTWARE FROM WEB IMPACT AND/OR RETAINED WEB IMPACT TO PROVIDE ANY SERVICES ("CUSTOMER") (EITHER DIRECTLY AND/OR THROUGH AN AUTHORIZED THIRD PARTY SUCH AS A RESELLER OR AN OEM DISTRIBUTOR). BY EXECUTING THE ORDER FORM OR THIRD PARTY AGREEMENT REFERENCING THIS PSA, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. READ IT CAREFULLY BEFORE EXECUTING THE ORDER FORM OR THIRD PARTY AGREEMENT REFERENCING THIS PSA. BY EXECUTING THE ORDER FORM, CUSTOMER IS CONFIRMING CUSTOMER'S ACCEPTANCE OF THIS AGREEMENT AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT.

1. Professional Services

a. Web Impact shall use commercially reasonable efforts to render all professional services which are described in the Order Form and which have been requested by Customer, together with any other instructions give to Web Impact by Customer, either in writing or verbally, which are agreed to by Web Impact (collectively, the "Professional Services"). Professional Services shall not include hosting services or support services.

b. If required, Web Impact shall prepare a Project Plan or a Statement of Work based on the Customer materials and discussions, which may include text, database information, logo's, graphics, drawings, illustrations, charts, information tables, audio, video or other components. If a Project Plan or a Statement of Work is required prior to performing the Professional Services, the Customer must request it in writing and Web Impact shall deliver the Professional Services in accordance with the Project Plan or Statement of Work agreed to in writing between the parties.

c. Any changes to the Project Plan and/or Statement of Work may result in work beyond that contemplated in the Project Plan and/or the Statement of Work. Any such additional work performed by Web Impact for Customer shall be billed at the Web Impact's standard hourly rate in effect at the time such additional work is performed. Customer will also be responsible for additional out of pocket expenses incurred by Web Impact.

d. Customer shall be responsible for: (i) designating and providing a single point of contact for Web Impact to ask questions and seek direction, (ii) making timely decisions required by Web Impact in order for Web Impact to provide the Professional Services, (iii) providing Web Impact with access to Customer's premises on an "as required" basis in order to allow Web Impact to provide the Professional Services, (iv) providing sufficient, qualified, knowledgeable personnel capable of performing Customer's obligations under this Agreement; (v) providing Web Impact with reasonable working space, equipment and office support (including, but not limited to, analog phone lines for dial up capabilities, digital or analog phone lines for long distance and local calls related to the provision of Professional Services, and photocopying equipment), and an environment where consultants can work efficiently, and meet with Customer personnel and/or other Web Impact consultants, as Web Impact may reasonably request, (vi) performing regular virus testing at least once every twenty-four (24) hours with the latest version of a widely used, industry accepted, virus testing software, and develop and be compliant with, standard backup and data recovery procedures, including performing back ups at least once every twenty-four (24) hours.

e. Customer acknowledges and agrees that the performance by Customer of its obligations under this Agreement is material to Web Impact's ability to provide the Professional Services. In the event Customer does not perform Customer's obligations in a timely manner, Web Impact shall not be deemed in breach of its obligations under this Agreement if any failure to provide the Professional Services or otherwise meet its obligations under this Agreement results from Customer's failure to meet Customer's obligations under this Agreement. In addition, in such a situation, Web Impact shall be entitled to terminate this Agreement, unless Web Impact and Customer can agree on mutually acceptable revisions to this Agreement and/or the amount Web Impact is charging for the Professional Services.

2. Payment

Web Impact shall invoice Customer for all Professional Services in accordance with the terms of this PSA the Software Order Form and/or any Project Plan or Statement of Work (if applicable) agreed to between the parties. Failing a written rate agreement, Web Impact shall bill Customer based on Web Impact's standard hourly rate in effect at the time such Professional Services are provided. Failure to pay the foregoing when due shall give Web Impact the right to terminate this Agreement without further liability, and all elements of any projects may be withheld by Web Impact until such payment has been made by you. Any delays caused in the project(s) or other services due to non-payment shall be the responsibility of Customer. Unless otherwise provided for in the Order Form, all monies owed to Web Impact shall become due and payable immediately upon receipt of invoice by Customer. Paid amounts are non-refundable. Customer is responsible for all taxes, duties, and customs fees due or owed in relation to Professional Services, excluding taxes based on Web Impact's income. All past due amounts will bear interest at the lesser of eighteen percent (18%) per annum or the highest interest rate allowable under applicable law.

3. Limited Warranty and Disclaimer

(a) Web Impact warrants that all Professional Services shall be provided in accordance with generally accepted industry standards. No specific result from the provision of Professional Services is assured or guaranteed. For any breach of the warranties contained in this Agreement, Customer's sole remedy and Web Impact's sole obligation is, at Web Impact's option, to: (i) reperform the Professional Services that were not as warranted at no additional charge to Customer, or (ii) refund the amounts paid by Customer for the Professional Services that were not as warranted, provided, in either case, that Web Impact has received written notice from Customer within thirty (30) calendar days after completion of any Professional Services that Customer alleges were not performed consistent with the warranties contained in the Agreement.

(b) WEB IMPACT DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOFTWARE THAT IS NOT MADE GENERALLY COMMERCIALY AVAILABLE BY WEB IMPACT, INCLUDING, WITHOUT LIMITATION, ANY SOFTWARE DELIVERED PURSUANT TO AN AGREEMENT, IS PROVIDED "AS-IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND AND WEB IMPACT EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS IN RELATION THERETO.

(c) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE PROFESSIONAL SERVICES PERFORMED OR THE DELIVERABLES RESULTING THEREFROM, 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 CUSTOMER. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS AND CUSTOMER MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

4. LIMITATION OF LIABILITY

(a) NEITHER WEB IMPACT NOR ITS SUPPLIERS SHALL BE LIABLE TO CUSTOMER 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, BUSINESS INTERRUPTION, COST OF PROCURING SUBSTITUTE GOODS AND/OR SERVICES 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 CUSTOMER 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 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 CUSTOMER AND CUSTOMER MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

(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 PROFESSIONAL SERVICES WOULD BE HIGHER.

5. Ownership and Intellectual Property, etc.

Web Impact and Customer agree that all right, title and interest (including, without limitation, all intellectual property rights) in and to any software, source and or object code, inventions, discoveries, processes or information, whether or not reduced to practice or patentable state, related technical information and all other results of the Professional Services (collectively "Work Product") shall be owned by Web Impact. For purposes of this Agreement, Work Product also includes Web Impacts' methodologies, templates, concepts, data, algorithms, formulas, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, programs systems, tools, source code, object code, data, databases, applications, engine protocols, routines, models, displays and manuals, including, without limitation, the selection, coordination and arrangement of the contents thereof, which Web Impact owned or controlled as of the effective date of this Agreement. Web Impact hereby grants to Customer a non-exclusive, non-transferable license to use such Work Product solely with the Software licensed by Customer from Web Impact in accordance with the terms of the End User License Agreement in respect of such Software.

6. Confidential Information

a. During the term of this Agreement, each party (the "Recipient") may have access to Confidential Information provided by the other party (the "Discloser"). For purposes of this Agreement, "Confidential Information" of Web Impact shall include, without limitation, the Software, object and source code for the Software, and any associated documentation, Web Impact's processes and methodologies, information identified as proprietary or confidential to Web Impact, the terms, conditions, and pricing contained in this Agreement, information received from others that Web Impact has agreed to keep confidential or to not disclose, Web Impact's research activities and plans, marketing and sales plans, strategic plans, forecasts, training materials, pricing and pricing strategies, methods of operation, internal controls, security procedures, customer lists and unpublished financial information. For purposes of this Agreement, "Confidential Information" of Customer shall include, without limitation, any and all information disclosed by Customer to Web Impact which is identified as confidential or proprietary, including but not limited to, Customer's strategies, forecasts, and customer lists.

b. Recipient will not disclose Discloser's Confidential Information, orally or in writing, to any third party without the prior written consent of Discloser, except as provided below. The parties will protect each other's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which the Recipient utilizes for its own information that it does not wish disclosed to others.

c. This Agreement imposes no obligation on Recipient with respect to Confidential Information provided by Discloser that Recipient can establish by legally sufficient evidence: (a) was, prior to receipt from Discloser, in the possession of, or rightfully known by Recipient, without an obligation to Discloser to maintain its

confidentiality; (b) is or becomes generally known to the public or comes into the public domain without violation of an Agreement or without a violation of an obligation of confidentiality owed to the Discloser; or (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality to Discloser.

d. Recipient may provide access to and use of the Discloser's Confidential Information only to those third parties that have a need to use and access the Confidential Information in the course of providing services to Recipient concerning Customer's use of the Software and have agreed to non-disclosure obligations substantially similar to those contained herein. Disclosure of Discloser's Confidential Information by any such third party will be deemed a breach by Recipient hereunder. To the extent Recipient may be required to disclose Confidential Information in a legal proceeding, Recipient may make such disclosure provided that Recipient notifies Discloser of such requirement prior to disclosure and makes diligent efforts to avoid and/or limit disclosure, and cooperates with Discloser in seeking a protective order.

e. The Recipient will not obtain, by virtue of an Agreement, any right, title, or interest in any Confidential Information of the Discloser, except as expressly provided herein. The obligation created by this Section shall survive the expiry or termination of this Agreement for any reason.

7. Term and Termination

a. This Agreement takes effect on the Effective Date as defined in the Order Form shall remain in effect for the Term as defined in the Order Form or any Project Plan or a Statement of Work (if applicable) unless terminated as provided herein.

b. If either party fails to comply with a material obligation under this Agreement, the other party may terminate this Agreement, by giving written notice of termination to the other party, if the other party fails to cure such failure to comply within thirty (30) days after the date of such written notice.

c. Within (5) days after termination of this Agreement, Customer shall, at Web Impact's election, deliver or destroy all copies of the Work Product and Confidential Information of Web Impact within its possession, custody or control (with all other rights of both parties and all other provisions of this Agreement surviving any such termination). Within (5) days after termination of this Agreement, Web Impact shall, at Customer's election, deliver or destroy all copies of the Confidential Information of Customer within its possession, custody or control.

8. Other Provisions

a. During the terms of this Agreement and for a period of eighteen (18) 18 months after the termination of all agreements between the parties, 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 Web Impact who were employed by Web Impact at the time Customer and Web Impact were doing business together, without the prior express written permission of Web Impact.

b. 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.

c. 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 Customer without the prior written consent of Web Impact and any such assignment without such consent shall be null and void.

d. 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.

e. 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 providing the Professional Services for reasons beyond its control, such Professional Services shall take place as soon thereafter as is reasonably possible.

f. 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. In the event of a dispute between the provisions of this Agreement (on the one hand) and the provisions of the Order Form, Project Plan or Statement of Work (on the other hand), the terms of this Agreement shall prevail.

g. 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.

h. Web Impact and 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.

i. Both parties agree in good faith to use commercially reasonable efforts to seek alternative means of solving disputes prior to engaging in any legal suits in relation to any disputes. Notwithstanding the foregoing, each party shall be entitled to seek immediate equitable relief.

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

k. 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.