

WEB IMPACT INC.

SUPPORT SERVICES TERMS AND CONDITIONS

THESE SUPPORT SERVICES TERMS AND CONDITIONS (THE "AGREEMENT") SET OUT A LEGAL AGREEMENT BETWEEN WEB IMPACT INC. ("WEB IMPACT") AND THE PERSON, COMPANY, OR ORGANIZATION ("CUSTOMER") THAT HAS SUBSCRIBED FOR SUPPORT SERVICES PURSUANT TO THE ORDER FORM OR THIRD PARTY AGREEMENT REFERENCING THIS AGREEMENT. BY EXECUTING THE ORDER FORM OR THIRD PARTY AGREEMENT, AS THE CASE MAY BE, REFERENCING THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. READ IT CAREFULLY BEFORE EXECUTING THE ORDER FORM OR THIRD PARTY AGREEMENT 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.

1. GENERAL

- (a) Web Impact shall provide to Customer various services (collectively the "Support Services") set forth in these Support Services Terms and Conditions on the terms and conditions set forth below and in the Software End User License Agreement (the "Agreement") agreed to between the parties.
- (b) Customer acknowledges that the Support Services consists of those services referred to in these Support Services Terms and Conditions as being provided to Customer, but do not include those matters set forth in paragraph 4 or 5 below.
- (c) Customer shall make such arrangements as may be necessary to enable Web Impact to communicate with Customer's systems in connection with the provision of the Support Services hereunder.
- (d) Customer shall gather all necessary information and data in sufficient quantities to enable Web Impact to test the Software in a manner and format and at such times as Web Impact may reasonable request in connection with carrying out the Support Services.
- (e) Customer shall make all necessary arrangements to enable Web Impact to obtain access to Customer's systems to permit Web Impact to provide the Support Services, provided that Web Impact shall only access the Customer systems to the extent necessary to conduct, and for the purpose of conducting, the Support Services, and provided further that such access shall only be permitted during regular business hours or, should the Severity Level of any Deficiency make the same necessary or desirable, outside of such hours. For purposes of these Support Services Terms and Conditions, the term "Deficiency" means a failure of the Software to operate substantially in accordance with the Documentation.
- (f) Customer shall provide a written copy of the identical command sequence demonstrating any Deficiency in the Customer Software if requested by Web

Impact. Customer shall comply in all respects with the reporting procedures established by Web Impact in making any request for Support Services, provided that Web Impact shall provide not less than thirty (30) days' prior written notice to Customer as to any changes to such reporting procedures.

- (g) Support Services will be provided only during the hours set forth in paragraph 3 below, depending upon the Support Services to be performed and the Severity Level of any Deficiency reported by Customer to Web Impact. Any Support Services which Customer requests and which Web Impact is willing and able to provide at times other than as so determined shall be subject to an extra charge to be agreed to by the parties in advance.
- (h) Customer shall designate an employee or agent of Customer who shall serve as the contact and who will be responsible for handling all technical and maintenance communications between Customer and Web Impact. Customer shall ensure that the contact shall be available for consultation at any time that Web Impact is providing Support Services under the Agreement.
- (i) Customer acknowledges that the Support Services shall be performed either by Web Impact or by such other person to whom Web Impact may subcontract such performance.
- (j) All capitalized terms used in these Support Services Terms and Conditions and not otherwise defined herein shall have the meaning attributed thereto in the Agreement.

2. ELIGIBILITY

- (a) Web Impact shall be obliged to provide the Support Services only with respect to the then most current release of the Software and to the then immediately preceding major sequential release of such Software provided that such preceding release is not then more than twelve (12) months old. Accordingly, once a new release has been delivered to Customer, Customer must convert to such new release within such period in order to ensure uninterrupted service and continued support.
- (b) All Software that is installed for Customer must be covered by the Support Services so long as Customer is obliged under the Agreement to continue to receive such Support Services, provided that any part of the Software may be withdrawn from Support Services if it has been removed from Customer's production environment (de-installed) and a written request including a statement of such removal has been delivered to Web Impact in accordance with the Agreement.

3. SUPPORT SERVICES

The following are provided as part of the Support Services:

(a) **Deficiency Management**

Deficiency management is the handling, evaluation and tracking of Deficiencies reported by Customer. The following processes are involved:

Receive online ticket	The reporting of a Deficiency impacts Customer productivity.
Log Deficiency	The Deficiency is recorded in the Web Impact problem log.
Assess Severity	The Web Impact customer support help desk (the "Help Desk") analyst will assign a Severity Level to the Deficiency, based on the definitions stated below in these Support Services Terms and Conditions.
Assign Deficiency	Web Impact's primary support analyst for that part of the Software in respect of which the Deficiency was reported is contacted by such analyst.
Inform Customer of Expected Resolution Time (ERT)	Customer is provided with the expected time for resolution of the Deficiency as soon as possible.
Escalate Deficiency Severity	The Help Desk analyst will monitor the Deficiency analysis to ensure timely resolution. Any Deficiency that is not resolved within the expected resolution time will be escalated to the next highest Severity Level, if requested by Customer, acting reasonably, and Customer will be provided with a revised ERT.
Inform Customer of Resolution	Advise Customer of the resolution of the Deficiency.
Close Online Ticket	The online ticket is then closed

(b) **Help Desk/Telephone Support**

Support Services are available through Web Impact's Help Desk between the hours of 9:00 a.m. and 5:00 p.m. (EST) Monday through Friday. Customer must access Support Services through the online ticketing system available at support.webimpact.com. Customer may also call the Help Desk at (866) 319-1573 ext. 228.

In emergency situations after hours, or on weekends and holidays, Help Desk

support is provided by Web Impact technical and customer service personnel on call. During these periods, Web Impact's Help Desk analysts may be accessed by e-mail at emergency@webimpact.com, and utilize pagers to respond to Customer' support calls.

(c) **Incident Tracking**

Incident tracking and reporting is accomplished through Web Impact's online incident tracking system available at support.webimpact.com. This system allows technical and support personnel to assign a unique identifying number to each Deficiency as it is reported, to designate a Severity Level to each such Deficiency, to provide a narrative that describes the Deficiency in detail, and to document the resolution of the Deficiency as it becomes known.

(d) **Deficiency Resolution**

Assistance in identifying and resolving Deficiencies is provided for the Software. Supporting Deficiency data/documentation is required in most cases. Web Impact's personnel responsible for resolving a Deficiency will guide Customer's technicians to the information required for researching the Deficiency along with the appropriate methods of obtaining the data.

As information about a Deficiency and its resolution is reported to Web Impact, such information will be dispersed to Customer via bulletins, releases or direct code changes, depending on the Severity Level and resolution of such Deficiency.

(e) **Prioritizing Deficiencies**

The following guidelines are used to prioritize Deficiencies:

Severity Level		Response and Resolution
1 - Critical	System (or Component) Down. Critical impact on Customer's system affecting all users of the specified application and/or has a severe business impact on Customer's production.	Response required immediately. Resources will be assigned on a high priority basis until the problem is resolved or a work-around is provided. Target: Resolution as soon as possible. Formal status reviews with Customer shall take place every four (4) hours until the Deficiency is resolved.
2 - High	System is operating in reduced capacity severely restricting Customer's production.	Response required immediately. Resources will be assigned on a high priority basis until the Deficiency is resolved. Target: Resolution as soon as possible by way

		of an extraordinary Software programming release or, where the Deficiency may be resolved by way of a suitable work-around, the final solution will be available on the next scheduled release or a mutually agreed date. Formal status reviews with Customer shall take place on such basis as the parties agree in respect of each such Deficiency, on a case by case basis, until the Deficiency is resolved.
3 – Medium	Non-critical – A Deficiency having little or no effect on Customer' production.	Resources will be assigned during regular business hours to investigate Deficiency and resolution. Target: Delivery of resolution will be prioritized for a scheduled release.
4 – Low	Low – Non-critical Deficiency, cosmetic, inquiry type or clarification Deficiency.	Resources will be assigned during regular business hours to investigate Deficiency and resolution. Target: Delivery of resolution may be prioritized for a scheduled release.

(i) Severity Level Determination

The impact and Severity Level of a reported Deficiency will be discussed with Customer at the time of notification to Web Impact. After such discussion, Web Impact will assign a Severity Level to the Deficiency.

The Severity Level of any particular Deficiency may be modified according to the diagnosis of the Web Impact personnel responsible for resolving such Deficiency. Severity Levels may be changed if an attempted resolution fails, or if the level of impact on Customer' business production changes.

(ii) Testing Solutions

The Web Impact personnel responsible for resolving any particular Deficiency will test, and will provide assistance to Customer's technicians in testing, solutions to any Deficiency. The Web Impact personnel responsible for resolving any particular Deficiency will advise as to the appropriate testing and back-out procedures to be used.

(iii) Error Corrections

Customer will periodically receive corrections to known Deficiencies in the form of new Software releases, patches and/or updates which incorporate such corrections.

(f) **Documentation**

Complete and up to date Documentation (one copy) shall be provided by Web Impact to Customer upon initial delivery of the Software. Updates to such Documentation may be delivered from time to time by Web Impact to Customer.

(g) **New Releases**

New or interim releases or versions of any part of the Software which Web Impact generally makes available to its customers who are current, compliance subscribers to Support Services will be delivered to Customer by Web Impact as Web Impact brings such offerings to market. New releases may include:

- new product functions, whether requested by Customer or any other licensee of the Software or conceived of by Web Impact independently.
- solutions to Deficiencies previously reported in Problem Report Bulletins
- modifications that Web Impact has chosen to make, such as changes related to market requirements and/or customer input, performance enhancements, and changes to accommodate technology (operating system updates, communications).

Any such new or interim release shall be provided by Web Impact to Customer without additional charge.

(h) **Separately Licensed Functionality and Software**

Software developed by Web Impact to enable a new functionality or software which Web Impact does not provide as part of Support Services generally to its customers shall not constitute part of the Software, Customer shall not be entitled to receive same as part of Support Services (i.e. such new functionality or software shall not be considered a New Release as referred to in paragraph (g) above) and Web Impact shall be entitled to charge separate and additional licence and maintenance fees in respect thereof should Customer wish to acquire a licence to utilize such additional functionality or software.

(i) **On-Site Assistance**

On-site assistance will be provided to resolve a Deficiency if Customer and Web Impact agree that such assistance would expedite resolution of such Deficiency. Customer will reimburse Web Impact for all travel and living expenses associated with the provision of such on-site assistance at any Customer site located outside the Greater Toronto Metropolitan area. If it is determined that the Deficiency was not as a result of any malfunction or error in the Software, Customer will be required to reimburse Web Impact for all time spent on-site at its then current professional services rates, in addition to travel and living expenses which are reimbursable to Web Impact as aforesaid.

4. ADDITIONAL SERVICES

So long as Customer continues to receive Support Services, Customer may purchase the following services (in addition, for greater certainty, to the Support Services separately paid for by Customer):

- Education/training
- Consulting support (implementation support, project management, operation review, assistance in capacity planning)
- Account Management Support
- Software customization services
- Maintenance of customized software (not including, for greater certainty, the Customized Software)
- Add-on products

All such services shall be provided pursuant to the terms and conditions of a separate professional services engagement at Web Impact's then current professional services rates, provided Customer is then receiving the Support Services and provided that Web Impact has the required capabilities for performing such services.

5. EXCLUSIONS

Support Services do not include the following services:

- (a) Assistance in resolving Deficiencies created: (i) as a result of Customer's changes to the Software, (ii) as a result of customized changes to the Software or (iii) as a result of any other modification, alteration or damage to the Software.
- (b) Assistance in resolving Deficiencies other than those associated with the Software. Some examples of this exclusion include problems associated with the hardware and its operating system, communications and system administration-related problems, and those Deficiencies encountered as a result of co-resident software not constituting part of the Software.
- (c) Assistance in resolving Deficiencies which cannot be replicated by Web Impact.
- (d) Assistance in resolving Deficiencies occurring as a result of:
 - hardware malfunction
 - any event of force majeure.
- (e) Assistance resolving Deficiencies or any other problems caused by third party software, whether supplied by Web Impact or otherwise
- (f) Assistance in migrating to a new version of Software

- (g) Consulting assistance of capacity planning, system tuning, and operational trouble-shooting.
- (h) Assistance in resolving Deficiencies caused by Customer's or its agents' or employees' negligence.
- (i) Assistance in resolving Deficiencies in Software that is not either the current release as of the date Support Services are rendered, or an immediately preceding sequential release of the Software as of the date Support Services are rendered.
- (j) Assistance in resolving Deficiencies caused as a result of the Software not being installed on hardware or in an operating environment which is not supported by Web Impact.
- (k) Training.
- (l) Assistance in installing, customizing or implementing the Software.

Any of the excluded services outlined above may be acquired from Web Impact pursuant to a separate professional services engagement at Web Impact's then current professional services rates, provided Customer is then receiving the Support Services and provided that Web Impact has the required capabilities for performing such services and is otherwise able to perform such services.

COOPERATION OF CUSTOMER

In order to best support Customer, Customer acknowledges that Web Impact will require Customer involvement in the resolution of Deficiencies. Customer and Web Impact must work together in order to expedite Deficiency resolution.

6. GENERAL AGREEMENT TERMS

(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 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. 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.