

## WEBHOSTING AND DOMAIN REGISTRATION SERVICE TERMS AND CONDITIONS

This Agreement (the "Agreement") is entered into by and between the Company ("we", "our", or "us"), and You, the Customer, located at the physical address listed on the Application for Service and/or Agreement ("Customer", "you", "your", or "yours") effective as of the date of application on the service application form.

### 1) **AGREEMENT**

- a) **Service ("Service").** The Company agrees to provide Service as described on the application form.
  - b) **Changes to Agreement.** The Company may revise the terms and conditions of this Agreement, including policies that may be applicable to the usage of the Service, from time to time and shall post updated versions of this Agreement to our website. You agree to visit these pages periodically to be aware of and review any such revisions. Revisions and changes to any term or condition other than Service Fees shall be effective immediately upon posting. By continuing to use the Service after revisions are in effect, you accept and agree to the revisions and agree to be bound by them. Increases in price shall be posted with thirty (30) days prior written notice. In the event that we increase the applicable Service Fees with valid notice and you wish not to pay the higher price, you must notify us in writing immediately that you wish to cancel the Service pursuant to section 9(b)(i) below.
- 2) **TERM** The term of this Agreement ("Term") shall be 24 months unless otherwise defined on the application form, and shall commence the first day of the first full month after activation of Service on Company servers. Partial Service prior to start of full term shall be prorated. During the period between the signing of this Agreement and the initial activation or installation of services, all mutual obligations shall be in effect except that the Company shall not invoice Customer for Service Fees for this period. This Agreement shall automatically renew for successive terms of equal length unless either party notifies the other in writing prior to thirty days of expiration of the current term that the party does not wish to renew this Agreement.

### 3) **PRICE, PAYMENT OF FEES AND TAXES**

- a) **Price.** Recurring Service Fees are listed on the application form of the Agreement. All equipment used to provide Service remains the property of the Company, unless otherwise specified.
- b) **Invoices and Payment.** The Company will generate and post online invoices for each Service Period. Service fees are payable in advance. The initial invoice will include prorated Service Fees from the initial installation through the date of the first invoice, plus Service Fees and charges for the Service Period to come. Payments are due upon posting and shall be made in U.S. dollars. Payment shall be made to the Company electronically or mailed to the address provided on the remittance portion of the invoice. A 1.75% per month (21% per annum) interest charge will be added to all outstanding balances not received within 30 days of invoice date. Any payment in bad funds (bounced checks, stopped checks, credit card declinations) will be assessed a \$25 fee for each instance. Repeated payment in bad funds will be considered a material default that may result in immediate termination of services and assessment of termination charges.
- c) **Taxes.** Service Fees payable by Customer to the Company under this Agreement are exclusive of any tax, levy, customs duty, import tax or similar governmental charge that may be assessed by any jurisdiction, whether based on gross revenue or delivery of services, except for net income taxes assessed on the Company. All such taxes are the responsibility of Customer.
- d) **Invoice Delivery.** Invoices are posted on the Company's ebill site. The Customer agrees that each invoice is due once posted. The Company will email the Customer when each invoice is produced. The Customer shall ensure that a valid email is on file with the Company at all times. Failure to receive emails at the email address the Company has on file does not absolve you of your obligation to remit payments when due.

### 4) **TRADEMARKS/PROPRIETARY RIGHTS/PUBLICITY / CONFIDENTIALITY**

- a) **Use Of the Company's Name and Trademarks.** All trademarks, service marks and trade names identifying the Company or the Company's products or services (the "Marks") are the exclusive property of the Company. Customer shall take no action that jeopardizes the Marks. Customer shall not use a Mark or the name of the Company in any advertising, promotional material, or public announcement without the prior written approval of the Company. This provision applies reciprocally to all Marks of Customer.
- b) **Use of Customer's Name.** Customer acknowledges that application for webhosting and domain registration Service will require that the Company include Customer's name in registrations which may be available to the public.

- 5) **CONTENT RESPONSIBILITY** Customer shall be solely responsible for the content of the website and any data or information submitted to the Customer or the Customer's website by users of the website. Customer agrees that neither it nor any third party utilizing Customer's website will use the Service for illegal purposes, or to interfere with or disrupt other network users, web services, or server equipment. Disruptions include, but are not limited to, distribution of unsolicited advertising or chain letters, propagation of computer worms and virus, and using the website to make unauthorized entry or obtain unauthorized information. The Company reserves the right to alter or terminate Service if Customer is found to be in violation of any of the above.

### 6) **DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- a) **THE COMPANY AND ITS SUPPLIERS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Neither the Company nor its suppliers shall be liable for any damage that Customer may suffer arising out of use, or inability to use, the Service or products provided hereunder. Neither the Company nor its suppliers shall be liable for unauthorized access by third parties to Customer's website, databases, ftp services or email, or for unauthorized access to or alteration, theft, loss or

destruction of Customer's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method.

- b) Except as expressly set forth herein, Customer accepts all risk, including all risk with respect to suitability, use and performance of the Services. In any instance involving performance or nonperformance by the Company with respect to services provided hereunder, Customer's sole remedy shall be the crediting of a pro rata portion of the price paid for Service which was not provided. Credits will be provided only for periods of lost Service greater than eight (8) hours. The Company shall not be liable for indirect, consequential, incidental or special damages even if advised of the possibility in advance. The Company shall not be liable for any lost property or data of Customer or Customer's Customers. The Company's liability for damages to Customer for any cause whatsoever, regardless of form of action, shall be limited to the amounts paid by Customer to the Company hereunder during the billing period preceding the incident giving rise to the claim for damages.
  - c) The Company provides Service strictly on an "AS IS" and "AS AVAILABLE" basis without any express guarantee or assurance of quality, reliability or functionality.
- 7) **DISCLAIMER OF CONSEQUENTIAL DAMAGES** IN NO EVENT WILL THE COMPANY, ITS AGENTS, AFFILIATES OR SUPPLIERS BE LIABLE FOR ANY OTHER DAMAGES, INCLUDING LOST REVENUES OR LOST PROFITS, LOSS OF DATA, OR OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8) **INDEMNIFICATION BY CUSTOMER** Customer agrees to defend, indemnify and hold the Company and its suppliers harmless from and against any claim or demand asserted by any third party due to or arising out of use by Customer or Customer's own Customers use of services provided hereunder.
  - 9) **TERMINATION**
    - a) **Termination By Either Party.** If any of the events below occur with respect to one party, then the other party may terminate this Agreement effective immediately upon the delivery of written notice:
      - (i) A party becomes insolvent; files a voluntary petition in bankruptcy; proposes any dissolution or liquidation; has filed against it an involuntary petition in bankruptcy, or a receiver is appointed or takes possession of the party's property, and such petition is not dismissed or stayed within ninety (90) days of such filing, appointment or taking possession; makes an assignment for the benefit of creditors, or is adjudicated as bankrupt; or takes any similar action under the laws of any jurisdiction.
      - (ii) Material breach of this Agreement which is not remedied within thirty (30) days after written notice describing the breach with particularity has been made.
      - (iii) In the event of termination for any reason, Customer assumes all responsibility for continued registration of any domain names related to this Agreement.
    - b) **Termination By Customer.**
      - (i) Customer may terminate this Agreement upon thirty (30) days written notice in the event that the Company makes material and substantial changes or adds material and substantial terms and conditions which Customer elects not to accept. Customer's notice must state that it is termination under this Subsection and enumerate with specificity the material and substantial changes the Customer is electing not to accept. Failure to provide such notice within thirty (30) days shall constitute a waiver of Customer's rights to invoke this Subsection.
      - (ii) **Quality of Service.** If Customer experiences service, availability, or support that is repeatedly below reasonable and accepted industry standards, Customer shall provide written notice to the Company citing this Subsection and detailing any such deficiency. If after thirty (30) days from receipt of said notice the deficiency has not been corrected by the Company, Customer shall have thirty (30) days to terminate this Agreement by providing thirty (30) days written notice. Said notice must state that Customer is terminating under this Subsection. Failure to provide either notice within the specified timeframe shall constitute a waiver of Customer's rights to invoke this Subsection.
      - (iii) Customer may cancel Service at any time and for any reason during the Term by providing at least sixty (60) days prior written notice. If you cancel under this Subsection, you agree to pay the Company:
        - (a) all Service Fees accrued as of the effective cancellation date; plus
        - (b) liquidated damages in an amount equal to eighty-two-point-five percent (82.5%) of Service fees due for the cancelled portion of the Service Period which would have otherwise accrued and been due.
      - (iv) During the interval between signing this Agreement and the actual activation of services, Customer may cancel Service. If you cancel under this Subsection, you agree to pay:
        - (a) any and all Service fees accrued as of the effective cancellation date; plus
        - (b) any charges incurred by the Company as a result of your cancellation.
      - (v) Customer acknowledges that the Company's actual damages arising from early termination are impossible to ascertain, that the termination charges are a reasonable estimate of the same, and that such charges constitute liquidated damages and not penalties.
    - c) **Termination By the Company.**
      - (i) The Company may terminate this Agreement immediately upon the failure of the Customer to pay all amounts due under this Agreement or in the event that the Customer does not perform any other obligations stated herein. The Company agrees that where feasible it shall provide written notice together with a statement of all amounts due and the date by

which such payment must be received in order to avoid termination of Service and a statement of the action or payment required in order to avoid such termination in advance of such proposed termination. In the event that the Company does so terminate service, Customer shall be responsible for all costs, fees, damages and payments which result or occur on account of such termination as stated herein or otherwise, in addition to the cancellation fee as stated in 9(b)(iii) and any costs of collection also as stated herein.

(ii) The Company may suspend or terminate any or all services covered by this Agreement without liability at any time if the Company reasonably believes its network, servers, assets, Customers or employees to be in jeopardy.

(iii) The Company may partially or fully terminate this Agreement without liability in the event a material change in law renders the Company incapable of providing the Services. Both parties recognize that this Agreement is subject to change, modification, or cancellation as may be required by any regulatory authority or court in the exercise of its lawful jurisdiction.

#### 10) AVAILABILITY OF SERVICE

a) Service is provided only on an "as is" basis and the throughput speeds and availability of your Service are not guaranteed.

b) At any time the Company may, without notice or liability, restrict the use of the Service or limit its time of availability in order to perform maintenance activities and to maintain session control.

c) The Company may, in its sole discretion, refuse to accept your application for Service for any reason whatsoever. Furthermore, in the case that your Service is suspended due to nonpayment, the Company may require a reconnection fee to be paid in full prior to Service being re-initiated.

##### d) Domain Name Registration.

(i) Your rights to any domain name registered by the Company on your behalf are not granted by the Company but are subject to the rules and regulations of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the related registry and applicable law. As such, in addition to this Agreement, you agree to also abide by any and all terms and conditions promulgated by ICANN, as amended from time to time, which are hereby incorporated and made a part of this Agreement by reference, for all domain name registrations or renewals, including but not limited to, the Uniform Domain Name Dispute Resolution Policy ("UDRP"), as well as any policy that ICANN has established or may establish with respect to Domain Names and/or WHOIS information.

(ii) The Company does not guarantee that you will be able to register or renew a desired domain name. The Company cannot know whether a domain name you are seeking to register is simultaneously being sought by a third party, or whether there are any inaccuracies or errors in the domain name registration or renewal process or related databases, including the various WHOIS or other registry databases. The Company is not responsible for any inaccuracies or errors in the domain name registration or renewal process.

(iii) It is your responsibility to keep your own records and to maintain your own reminders regarding when your domain name registration will expire. As a convenience to you, and not as a binding commitment, we may notify you via email when domain names registered pursuant to this Agreement will expire. If you have any unpaid balance due with us, your domain registration may expire or be cancelled. Your request to restore or reactivate your domain name will incur a reactivation fee on top of the regular domain renewal fees, however, once expired, domain names may be rendered unavailable for reactivation.

#### 11) MANAGEMENT OF YOUR DATA

a) You are solely and entirely responsible for management of your data and information, including, but not limited to, back-up and restoration of your website, data, erasing data from disk space you control, and any data or information provided by your customers or users of the Service.

b) You are solely and entirely responsible for development and maintenance of any security procedures you deem appropriate, such as logon security and encryption of data, UserID, alias, and password on your website, and backups and encryption to protect your information. The Company is not responsible for backup and restoration of your information and strongly recommends the use of backup and restoration software.

c) You agree that your use of the Service and the Internet, without limitation, is your sole responsibility, is solely at your own risk, and is subject to all applicable local, state, national, and international laws and regulations. You agree that the Company has no control over the Internet and does not own the Internet and as such does not guarantee that the Service that you have ordered will suit your needs. You agree and understand that the Company does not and cannot guarantee or warrant that data you maintain or upload to your website, or that is uploaded to your web or ftp site, or sent to email addresses provided will be free of viruses, worms, or any other malicious code and that you are responsible for maintaining and implementing adequate procedures to protect yourself from these threats. You agree that the Internet is not a secure network and that third parties may be able to corrupt, intercept, or otherwise access the information that you place on your website and the Company is not responsible for any security or corruption issues whatsoever.

d) In the event that your website content, data or information is corrupted, deleted, disabled, or otherwise lost or made unavailable to you, the Company will make a best-effort attempt to recover your files if notified within thirty (30) days that you wish such an attempt to be made. Such attempts are made on a best-effort basis with no guarantee of success, and with no representation that any data will be recovered, or that any data recovered will be useable.

e) You agree to take full responsibility for files, information and data transferred, and to maintain

all appropriate backup of files and data stored on our servers. The Company is not responsible for any data loss.

#### 12) GENERAL

a) Governing Law; Amendments; Severability. This Agreement shall be construed under and governed by the laws of the State of New Hampshire excluding its conflicts of laws and provisions. Both parties agree that any dispute arising under this Agreement shall be resolved before a court of competent jurisdiction within the County of Grafton, New Hampshire. Customer agrees to waive its right to trial by jury in the event that amounts due meet the jurisdictional limit of the Superior Court. This Agreement may only be modified by a written amendment duly executed by Customer and the Company except as otherwise provided for herein.

b) Independent Contractors. The parties hereto will be deemed to have the status of independent contractors, and nothing in the Agreement will be construed to place either party or its personnel in a relationship of employer-employee, principal-agent, partners or joint ventures with the other party. Neither party is authorized nor will have the power to bind the other party in any means whatsoever, make any representations or warranties on the other's behalf, and neither party will hold itself out as having the capacity to do so.

c) Force Majeure. If the performance of any obligation is interfered with by reason of any circumstances beyond the reasonable control of the party affected, then the party affected shall be excused from such performance to the extent necessary, provided that the party so affected shall use reasonable and diligent efforts to remove such causes of nonperformance.

d) Assignment. Customer may not assign this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the Company. Any unauthorized attempt to assign this Agreement or any of Customer's rights, duties, or obligations without such prior written consent shall be considered null and void. Customer, and not the Company, shall bear the risk of any loss arising from any unauthorized or fraudulent usage of services provided under this Agreement to the Customer. The Company may at its sole discretion terminate this Agreement and any licenses granted under this Agreement by notice to Customer effective on the date such notice is given if Customer assigns this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the Company. The Company may assign its rights under this Agreement and this Agreement shall inure to the benefit of the successors and assigns of the Company and shall be binding upon Customer.

e) Non-waiver. Failure of either party to assert any of its rights on any one occasion under this Agreement shall in no way be construed as a waiver of such rights on any other occasion, nor shall a waiver of any right of either party constitute or be deemed a waiver of any other right.

f) Billing Disputes. Customer must provide the Company with written notice of any disputed charge(s) within ninety (90) days of invoice production or will be deemed to have waived its rights to dispute the charges. If a dispute is filed on or before the Due Date for the respective invoice, Customer shall pay the invoiced amount minus the disputed amount by the due date. Customer shall have no right to withhold amounts not disputed by the Due Date; payment of an invoice shall not be deemed a waiver of Customer's rights to later dispute any invoice within the time period established in this section. The dispute notice shall set forth in reasonable detail the information concerning the disputed charges and reasons for the dispute. The Company and Customer shall attempt in good faith to promptly resolve any objection to the invoiced amount. If the dispute is subsequently resolved in favor of the Company, Customer shall pay the disputed amount previously withheld within ten (10) days of such resolution. If the dispute is subsequently resolved in favor of Customer, the Company shall issue a credit on Customer's account for the disputed amount.

g) Cost of Collection or Action. In the event that the Company is required to undertake any actions or incurs any costs to enforce any term or provision of this Agreement whether or not any suit is filed hereon, the Customer agrees to pay, upon demand by the Company, in addition to any other amounts due under the contract, all such costs including reasonable attorney's fees and other collection charges. Customer agrees that reasonable attorney's fees include costs incurred by the Company in employing a General Counsel, such hourly fees not to exceed \$250 per hour.

h) Notices. All notices under this Agreement shall be deemed given if delivered by hand, delivered by a major commercial courier service, or mailed by certified U.S. first class or air mail, to a party at its address as set forth on this website or as amended by notice pursuant to this Subsection. Notice shall be deemed received five (5) days after deposit in the U.S. mail, and one day after sent by courier.

i) Entire Agreement Severability. This Agreement supersedes all prior communications or agreements between the parties relating to this Subject. If any provision of this Agreement is held to be unenforceable, that provision shall be amended or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

j) Rules of Construction. No rule of construction requiring interpretation against the draftsman shall apply in the interpretations of this Agreement.

k) Acceptable Use Policy (AUP). Customer acknowledges receipt of the Company's Acceptable Use Policy and agrees to unconditionally abide by it.

l) Use. The services under the Agreement are intended for Customer's use only and any use for resale is expressly prohibited.