

# MAPLEWEB

## TERMS OF USE

The services that MAPLEWEB (the "Company") provides to you are subject to this Terms of Use ("TOU"). You will hereinafter be referred to as "Customer," the scope of which definition will include, without limitation, your agents, employers, and employees. This TOU, in addition to any Order Form (as defined below) and any other specific agreement for Company Services (as defined below) between Customer and the Company, represents the complete understanding and agreement between the Company and Customer. Except when expressly agreed to the contrary in writing signed by an authorized representative of the Company, this TOU supersedes any other agreement, whether written, oral, by conduct, or otherwise.

THE COMPANY RESERVES THE RIGHT TO UPDATE THE TOU (INCLUDING, WITHOUT LIMITATION, CHANGING OR DISCONTINUING ANY OF THE "COMPANY SERVICES" AS DEFINED BELOW) AT ANY TIME WITHOUT NOTICE TO CUSTOMER. ANY SUCH CHANGE OR DISCONTINUANCE WILL LEGALLY BIND CUSTOMER FROM THE TIME WHEN THE COMPANY PUBLISHES AN UPDATED VERSION OF THE TOU ON THE WEB SITE. IT IS CUSTOMER'S SOLE RESPONSIBILITY, AND IT IS NOT THE COMPANY'S RESPONSIBILITY WHATSOEVER, TO ENSURE THAT CUSTOMER IS UP-TO-DATE ON THE MOST CURRENT VERSION OF THE TOU.

The most current version of the TOU can be reviewed by clicking on the "Terms of Use" hypertext link located at Company's web site (the "Web Site").

THE SUBMISSION OF CUSTOMER'S "ORDER FORM" (WHICH DEFINITION INCLUDES, WITHOUT LIMITATION, THE COMPANY'S ONLINE ORDER FORM, HARD COPY WRITTEN ORDER FORM, AGREEMENTS FOR COMPANY SERVICES, OR TELEPHONE ORDERS OR QUOTES SUBMITTED), OR CUSTOMER'S USE OF ANY COMPANY SERVICES, WILL IMMEDIATELY AND AUTOMATICALLY CONSTITUTE CUSTOMER'S ACCEPTANCE OF THE TOU AND WILL BIND CUSTOMER TO THE TOU ACCORDINGLY. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER HAS READ THIS TOU THOROUGHLY, HAS HAD SUFFICIENT OPPORTUNITY TO SEEK LEGAL COUNSEL OR HAS WAIVED SUCH OPPORTUNITY, AND THEREFORE CLEARLY UNDERSTANDS AND AGREES TO ALL THE TERMS AND CONDITIONS CONTAINED IN THIS TOU.

Wherever in this TOU the masculine, feminine, or neuter gender is used, it will be construed as including all genders, and wherever the singular is used, it will be deemed to include the plural and vice versa, where the context so requires. In each and every instance herein, the term "including" will mean "including, but not limited to."

The Company will provide Company Services to Customer in exchange for fees and full compliance with the following terms and conditions:

### 1. PROVISION OF COMPANY SERVICES

a. Company Services Defined. "Company Services" include the following:

(i) any act of preparing, setting up, connecting, maintaining, terminating, or reconnecting "Customer's Account" (which definition includes all billing data related to Company Services and the space on the particular Web server that the Company provides to Customer for the purpose of providing Company Services to Customer);

(ii) any use by Customer, or any access provided to Customer by the Company, of computing, telecommunications, software, information, hardware, and equipment provided by the Company or third parties affiliated with the Company;

- (ii) any act, or provision of any service, by the Company to Customer related to web hosting and domain name registrations (including server usage and technical support), regardless of duration and whether paid for or not;
- (iii) any provision by the Company to Customer, of any space, Internet connectivity, or electrical power;
- (iv) any access or use related to the Web Site, including the Web Site itself;
- (v) any other service mentioned in the TOU;
- (vi) any other service provided by the Company to Customer, whether used or not;
- (vii) any other service related to the Company that is used by Customer, whether offered or provided by the Company to Customer.

b. Amendment of Fees & Charges. The Company may amend the fees and/or charges for any Company Services without prior notice to Customer.

c. Management & Backup of Data. Except where the Company has expressly agreed in writing to the contrary, Customer is solely and entirely responsible, and the Company is in no way responsible, for the management and backup of all Customer data, and all updates, upgrades, and patches to any software that Customer uses in connection with Company Services.

d. Maintenance Windows. Customer acknowledges and agrees to the weekly scheduled maintenance windows, which the Company may perform at least every week. Customer understands and agrees that during a scheduled maintenance window, any or all Company Services may be unavailable. Customer further understands and agrees that the Company has the right to conduct an emergency maintenance window at any time, during which any or all Company Services may be unavailable.

e. License to Occupy Only. Customer acknowledges that Customer has no real property interest in any equipment space provided to Customer by the Company, and Customer agrees that any such provision of equipment space grants Customer only a license to occupy the equipment space. Payment by Customer for the equipment space does not create or vest in Customer (or in any other party) any leasehold estate, easement, ownership interest, lien, or other proprietary right or interest of any nature in any part of the Company's premises or facilities including the equipment space.

f. Domain Name Registrations. Company Services related to the registration of a domain name is limited to the submission of the registration request to the appropriate registrar. THERE IS NO GUARANTEE, AND THE COMPANY SPECIFICALLY DISCLAIMS ANY SUCH GUARANTEE, THAT A PARTICULAR APPLICATION FOR A DOMAIN NAME WILL BE ACCEPTED, APPROVED, OR REGISTERED. Customer understands and agrees that each individual domain name constitutes a single submission. It is Customer's sole responsibility to provide accurate information and to notify the appropriate registrar directly, and NOT the Company, about any change to the original information. For country code top-level domain names, Customer acknowledges that the fees are non-refundable, even if the domain name is rejected (because the fee is for the service of submitting the application). Customer understands and acknowledges that each individual registry or registrar may have additional domain registration fees that Customer will have to pay.

g. Third Party Services or Products. Customer acknowledges and agrees that any recommendation made by the Company's employees for services or products ancillary to Company Services are the recommendations of that employee only and not of the Company. The Company does not warrant the integrity or quality of the services or products provided by such third parties. Customer agrees to hold the Company, any third party entity related to the Company (including third party vendors), and the Company's executives, directors, officers, attorneys, managers, employees, consultants, contractors, agents, parent companies, subsidiaries, and affiliates (herein and hereinafter meaning any company owned by the same parent company, whether partially or wholly) harmless from and against any and all liabilities, losses, costs, judgments, damages, claims, or causes of action, including any and all legal fees

and expenses arising out of or related to Customer's reliance on any recommendation made by an employee of the Company regarding services or products ancillary to Company Services.

h. The Company's Right of Refusal & Termination. The Company may, at its sole discretion, refuse Company Services to any Customer (whether potential, new, or existing) and/or terminate the supply of Company Services to Customer immediately, with or without any prior notice, if the Company deems Customer to be in breach of the TOU, notwithstanding that Customer may be in breach of any other agreement by complying with the TOU. In case of non-payment, Company has a right to suspend the account without any prior notice. There will be a service charge of fifty dollars (\$50.00) to re-activate a terminated account.

i. Email Accounts. All email accounts (including, but not limited to POP email accounts) that have not been logged into for a period of 4 consecutive months or more shall be deemed abandoned and the Company shall have the right to delete the email account ("Abandoned Mailbox") and/or all emails residing in such Abandoned Mailbox ("AbandonedEmails").

At least 1 weeks in advance, the Company shall send to the master email account a notice that the Abandoned Mailbox and/or the Abandoned Emails shall be deleted if the user or customer does not log into the Abandoned Mailbox within 2 weeks.

The Company has the right to delete all content stored in any of customer's spam folders or email accounts for 30 days or more.

## 2. USE OF COMPANY SERVICES

c. Ownership of Customer's Account & Customer's Web Site. CUSTOMER ACKNOWLEDGES, WARRANTS, AND AGREES THAT THE LEGAL OWNER OF CUSTOMER'S ACCOUNT WILL BE THE INDIVIDUAL, COMPANY, OR ENTITY WHOSE NAME IS LISTED IN THE COMPANY'S DATABASE AS THE OWNER OF CUSTOMER'S ACCOUNT ("ACCOUNT OWNER"). ONLY THE ACCOUNT OWNER MAY MAKE MODIFICATIONS, INCLUDING CHANGE OF OWNERSHIP, TO CUSTOMER'S ACCOUNT, SUBJECT TO THE COMPANY'S WRITTEN CONSENT. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THE LEGAL OWNER OF THE WEB SITES HOSTED UNDER CUSTOMER'S ACCOUNT WILL BE THE ACCOUNT OWNER, EXCEPT WHERE CUSTOMER'S CUSTOMERS OWN THE WEB SITES. CUSTOMER WILL FULLY COOPERATE WITH AND ABIDE BY ANY AND ALL OF THE COMPANY'S SECURITY MEASURES AND PROCEDURES (INCLUDING CUSTOMER'S PROVISION TO THE COMPANY OF VALID IDENTIFICATION, CREDIT CARD NUMBER, AND/OR NOTARIZED AFFIDAVIT) IN THE EVENT OF ANY CONFLICT WITH REGARDS TO THE OWNERHIP OF CUSTOMER'S ACCOUNT AND/OR WEB SITES.

d. Customer's Lawful and Ethical Use. Customer agrees to use the Company Services as permitted by applicable laws (including, without limitation, local, provincial, state, and federal laws) and in a manner that is not unethical, libelous, or contrary to public or Company policy.

e. Customer's Warranty, Liability, & Indemnification. Customer acknowledges and agrees that the Company will be the sole determinant of whether or not Customer is in breach of the TOU. Customer is solely responsible for any legal liability arising out of, or relating to, Customer's use of Company Services. Customer represents, warrants, and covenants to the Company that Customer holds the necessary rights to use, or permit to use, any item used through any of the Company Services, and that the use, reproduction, distribution, transmission, or display of any data to the public, and any material to which the public can link or access, or any aspect of Company Services made available to the public through Customer, does NOT and will NOT:

(i) violate or potentially violate any right of any third party, including copyrights, patents, trademarks, trade secrets, or other proprietary rights;

(ii) constitute or potentially constitute violations, including false advertisement, unfair competition, defamation, invasion of privacy, invasion of rights, and discrimination;

- (iii) cause or potentially cause any dispute or legal action/proceeding;
- (iv) contain or potentially contain any material that is unlawful, harmful, fraudulent, libelous, slanderous, threatening, abusive, harassing, defamatory, vulgar, obscene, profane, hateful, or otherwise offensive;
- (v) contain or potentially contain any material that is racially, ethnically, disputatiously, argumentatively, or ethically objectionable; or
- (vi) contain any other material that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law (including export control laws).

Furthermore, Customer represents and warrants that Customer is not and has not been designated a suspected terrorist as defined in Executive Order 13224, that Customer is not a party to, associated with, controlled by, or otherwise related in any way to any individual or organization listed in the Annex to Executive order 13224 and all updates thereto.

Customer agrees to indemnify and hold harmless the Company, any third party entity related to the Company (including third party vendors), and the Company's executives, directors, officers, attorneys, managers, employees, consultants, contractors, agents, parent companies, subsidiaries, and affiliates from and against any and all liabilities, losses, costs, judgments, damages, claims, or causes of action, including any and all legal fees and expenses arising out of or relating to Customer's breach of any provision of the TOU or any other third party claim with respect thereto.

f. Customer's Prevention of Corruption. Customer must actively endeavor to prevent any corruption of the Company's systems, including viruses. The Company reserves the right to run anti-virus programs, at the Company's sole discretion, to minimize potential and actual damages.

g. Other Prohibited Conduct. Customer must not commit or permit any reverse engineering, reverse assembling, disassembling, reverse compiling, or decompiling, or any attempt to derive source code from, any prototypes, hardware, software, or other tangible objects provided to Customer by the Company.

h. Mandatory Upgrades. If the Company, in its sole discretion, deems Customer or Customer's Account to be adversely affecting the Company's server performance or network integrity, or Customer's Account is consuming use of bandwidth or disk space above the allowance specified in Customer's particular service package, then the Company may request of Customer, and Customer must comply with such request, to upgrade Customer's Account to a service package that would, in the Company's sole discretion, adequately accommodate the use, consumption, and other requirements of Customer's Account and accommodate the Company's provision of Company Services to Customer's Account. Any and all downgrades of service packages are subject to the Company's sole approval and applicable fees.

i. Fixtures & Registration of Personal Property. Customer acknowledges and agrees that any of the Company's equipment, whether or not physically affixed to any part of the Company's premises or facilities, will not be construed to be fixtures. For Customer's own equipment, Customer must register, or cause the lessor of such equipment to register (if applicable), the equipment as Customer's personal property whenever required by any applicable law, and Customer agrees to pay all taxes levied upon such equipment.

j. Other Parties' Permission & Policies. Customer's use of networks, computing resources, or other services from other parties is also subject to those parties' respective permission and usage policies. In the event of any conflict between the usage policies of the other parties and the TOU, the TOU will prevail and Customer will comply with the TOU.

k. Domain Name Registrations. Customer agrees that by submitting to the Company an Order Form for domain name registration, Customer represents and warrants that the information submitted therein is true, accurate, and complete, and that any and all future changes to this information will be provided to the appropriate registrar in a timely manner. Customer also acknowledges and agrees that any

submission of an Order Form for domain name registration does not confer immunity from objection to either the registration or use of the domain name.

l. Other Registry/Registrar Policies. Upon Customer's registration of a domain name with any registry or registrar, Customer will also be subject to the usage policies of that registry or registrar. In the event of any conflict between the usage policies of the particular registry or registrar and the TOU, the TOU will prevail and Customer will comply with the TOU.

### 3. CUSTOMER'S ABUSE AND BREACH

a. Customer's Abuse Defined. Any abuse of Company Services is a breach of the TOU ('Customer's Abuse'). Determination of what constitutes Customer's Abuse will be at the sole discretion of the Company. Customer's Abuse includes Customer's use of Company Services to engage in criminal activities (including child pornography and fraud), infringement of third party intellectual property rights, display or communication of vulgar, offensive, defamatory, or threatening materials, use of Company Services that disrupts the normal use of Company Services for other customers of the Company or Customer's customers, spawning processes, consuming excessive amounts of memory, CPU and/or bandwidth, spamming or mass emailing (whether or not it overloads a server or disrupts service to the Company's customers), unauthorized access to or use of data, systems, or networks (including any attempt to probe, scan or test the vulnerability of a system or network, or to breach security or authentication measures without express authorization of the owner of the system or network), and interference with the Company's provisions of Company Services to any user (including mail bombing, flooding, deliberate attempts to overload a system, and broadcast attacks). Without limiting the scope of the foregoing, the Company specifically forbids the storage of illegal or pirated software, the use of any type of IRC bot and/or proxy (including 'bnc' and 'eggdrop'), the storage or use of any type of software intended for hacking or cracking purposes, the storage or sale of unsolicited bulk email lists intended for spamming or resale purposes, and the forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting. Customer understands, acknowledges, and agrees that Customer's Abuse is just cause for the Company to immediately terminate this TOU and any and all provision of Company Services to Customer.

b. Spamming. Customer understands and acknowledges that the Company has a zero-tolerance policy against the sending of unsolicited bulk emails and/or commercial messages over the Internet ("Spam" or "Spamming"), which definition also includes maintaining an open SMTP policy, engaging in Spamming using the services of another Internet service provider ("ISP") or Internet presence provider ("IPP") and referencing in the Spam a web site hosted on the Company's server, and selling or distributing software on a web site that facilitates Spamming and resides on a server of the Company. Spamming is strictly prohibited under the TOU and is just cause for the Company to terminate this TOU and any and all provision of Company Services to Customer.

c. Disciplinary Measures. In the event of Customer's Abuse, the Company may implement, at the Company's sole discretion, any disciplinary measure, including warning, suspension, or termination of Customer's Account and all provision of Company Services to Customer. If Customer has been suspended, and the Company chooses to repeal the suspension, the Company may, at its sole discretion, charge Customer a reconnection charge before the Company provides any further Company Services to Customer. Customer acknowledges and agrees that if a Customer's Account has been suspended or placed on hold, the Company may redirect visitors of the particular Customer's web site to the Company's technical support web page. Customer further agrees to indemnify and hold harmless the Company, any third party entity related to the Company (including third party vendors), and the Company's executives, directors, officers, attorneys, managers, employees, consultants, contractors, agents, parent companies, subsidiaries, and affiliates from and against any and all liabilities, losses, costs, judgments, damages, claims, or causes of action, including any and all legal fees and expenses arising out of or relating to the Company placing Customer's Account on hold.

d. Monitoring. The Company reserves the right, and Customer consents, to the Company monitoring Company Services and the content on Customer's web site(s) to determine whether or not Customer is using Company Services in compliance with the TOU. However, Customer understands and acknowledges that the Company does not monitor Customer's communications, activities, or web site content as a general practice, and the Company expressly disclaims that it maintains any such general practice.

e. Misclassification. Customer acknowledges that Customer's activity may be misclassified as Customer's Abuse. A Customer who believes that Customer's activity has been misclassified may appeal to the Company's Technical Support Manager. Determination of whether or not Customer's activity is indeed Customer's Abuse is at the Company's sole discretion. Customer further agrees to hold harmless the Company, any third party entity related to the Company (including third party vendors), and the Company's executives, directors, officers, attorneys, managers, employees, consultants, contractors, agents, parent companies, subsidiaries, and affiliates from and against any and all liabilities, losses, costs, judgments, damages, claims, or causes of action, including any and all legal fees and expenses arising out of or relating to the Company misclassifying Customer's activities as Customer's Abuse.

f. Breach of the TOU. Customer agrees to report to the Company any breach of the TOU by Customer, any other customer of the Company, or anyone else using Company Services or associated with the Company. If Customer is unsure of whether or not a particular activity constitutes a violation of the TOU, Customer must notify the Company and the Company may make such determination. The final determination of what constitutes breach of the TOU will be at the Company's sole discretion.

g. Civil &/or Criminal Liability for Breach. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY BREACH OF THE TOU BY CUSTOMER MAY RESULT IN CIVIL ACTION AND/OR CRIMINAL PROSECUTION.

#### 4. TERMINATION

a. Cause for Termination. CUSTOMER UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT IF THE COMPANY DEEMS CUSTOMER TO BE INVOLVED, IN ANY WAY, IN ANY BREACH OF THE TOU THE COMPANY RESERVES THE RIGHT TO IMMEDIATELY TERMINATE, WITHOUT ANY PRIOR NOTICE TO CUSTOMER, THE TOU AND COMPANY SERVICES TO CUSTOMER. THE COMPANY WILL NOT IN ANY WAY BE LIABLE TO CUSTOMER, AND CUSTOMER WILL MAKE NO CLAIM AGAINST THE COMPANY, FOR TERMINATING THE TOU OR COMPANY SERVICES TO CUSTOMER AS PROVIDED HEREIN.

b. Bankruptcy & Insolvency. In the event Customer becomes insolvent or any bankruptcy petition is filed by Customer or any third party against Customer, this TOU will automatically terminate and the Company may immediately terminate Company Services to Customer without prior notice and/or any penalty whatsoever. Customer further consents to the grant of relief from any automatic stay of proceedings against the Company in such event.

c. Survival. The following sections of this TOU will survive the expiry or termination of this TOU for any reason: 3(d); 3(f); 4 to 8 inclusive; 10; 11; 15 to 20 inclusive.

#### 5. INDEMNIFICATION

CUSTOMER AGREES TO PROTECT, DEFEND, HOLD HARMLESS, AND INDEMNIFY THE COMPANY, ANY THIRD PARTY ENTITY RELATED TO THE COMPANY (INCLUDING THIRD PARTY VENDORS), AND THE COMPANY'S EXECUTIVES, DIRECTORS, OFFICERS, ATTORNEYS, MANAGERS, EMPLOYEES, CONSULTANTS, CONTRACTORS, AGENTS, PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, COSTS, JUDGMENTS, DAMAGES, CLAIMS, OR CAUSES OF ACTIONS, INCLUDING ANY AND ALL LEGAL FEES AND EXPENSES, ARISING OUT OF OR RESULTING IN ANY WAY FROM CUSTOMER'S USE OF COMPANY SERVICES.

## 6. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT, AND UNDER NO THEORY OF LAW OR EQUITY, WILL THE COMPANY (INCLUDING THE COMPANY'S EXECUTIVES, DIRECTORS, OFFICERS, ATTORNEYS, MANAGERS, EMPLOYEES, CONSULTANTS, CONTRACTORS, AGENTS, PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, THIRD-PARTY PROVIDERS, MERCHANTS, LICENSORS, OR THE LIKE) OR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING COMPANY SERVICES, BE LIABLE FOR THE LOSS OF A DOMAIN NAME, OR ANY BUSINESS OR PERSONAL LOSS, REVENUE DECREASE, EXPENSE INCREASE, COST OF SUBSTITUTE PRODUCTS AND/OR COMPANY SERVICES, OR ANY OTHER LOSS OR DAMAGE WHATSOEVER, OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND – EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES – (I) ARISING OUT OF ANY USE OF OR INABILITY TO USE ANY COMPANY SERVICES, OR (II) RELATED TO THE COMPANY'S MIGRATION OR MOVEMENT OF ANY EQUIPMENT BELONGING TO CUSTOMER AND/OR THE COMPANY. THE COMPANY'S TOTAL CUMULATIVE LIABILITY, IF ANY, TO CUSTOMER, OR ANY THIRD PARTY, FOR ANY AND ALL DAMAGES, RELATED TO THE TOU OR CUSTOMER SERVICES, INCLUDING THOSE FROM ANY NEGLIGENCE, ANY ACT OR OMISSION BY THE COMPANY OR THE COMPANY'S REPRESENTATIVES, OR UNDER ANY OTHER THEORY OF LAW OR EQUITY, WILL BE LIMITED TO, AND WILL NOT EXCEED, THE SETUP FEE OR THE MONTHLY FEES PAID BY CUSTOMER FOR COMPANY SERVICES, WHICHEVER IS GREATER.

## 7. DISCLAIMER

a. No Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS TOU, NO ADVICE, WHETHER WRITTEN, ORAL, OR OTHERWISE, THAT IS GIVEN BY THE COMPANY, ITS EMPLOYEES, AGENTS, LICENSORS, OR THE LIKE, WILL CREATE A WARRANTY AND ANY RELIANCE ON SUCH INFORMATION OR ADVICE BY CUSTOMER WILL BE AT CUSTOMER SOLE RISK, AND THE COMPANY WILL IN NO WAY BE LIABLE TO ANYONE FOR SUCH RELIANCE.

b. Backup of Data & Insurance. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS CUSTOMER'S SOLE RESPONSIBILITY, AND THAT COMPANY IS IN NO WAY RESPONSIBLE, FOR THE BACK UP OF CUSTOMER'S DATA AND FOR THE MAINTENANCE OF ADEQUATE INSURANCE IN RELATION TO CUSTOMER'S EQUIPMENT.

c. Changes, Modifications, Movement, & No Backup of Data. CUSTOMER AGREES THAT THE COMPANY MAY DISCONTINUE, UPGRADE, REPLACE, MODIFY, CHANGE, OR PHYSICALLY MOVE IN ANY WAY, WITHOUT LIMITATION, ANY SOFTWARE, APPLICATION, PROGRAM, DATA, HARDWARE, EQUIPMENT, OR PORTIONS OR COMPONENTS THEREOF, USED TO PROVIDE CUSTOMER WITH COMPANY SERVICES. CUSTOMER UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT CERTAIN CHANGES TO COMPANY SERVICES MAY AFFECT THE OPERATION OF CUSTOMER'S PERSONALIZED APPLICATIONS AND CONTENT. THE COMPANY MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE PERFORMANCE, CONDITION, OR EXISTENCE OF ANY OF CUSTOMER'S PERSONALIZED APPLICATIONS AND CONTENT. CUSTOMER ALSO AGREES THAT CUSTOMER IS SOLELY RESPONSIBLE, AND THE COMPANY IS NOT RESPONSIBLE OR LIABLE IN ANY WAY, FOR ANY OF CUSTOMER'S PERSONALIZED APPLICATIONS AND CONTENT, INCLUDING THE MANAGEMENT AND BACKUP OF ANY AND ALL CUSTOMER DATA AND ADEQUATE INSURANCE OF CUSTOMER'S EQUIPMENT.

d. Systems Information. THE COMPANY MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE QUALITY, ACCURACY, OR VALIDITY OF THE DATA AND/OR INFORMATION AVAILABLE. USE OF INFORMATION OBTAINED FROM OR THROUGH THE COMPANY IS AT THE SOLE RISK OF CUSTOMER.

e. Interconnecting Networks Information. CUSTOMER ACKNOWLEDGES THAT THE DATA OR INFORMATION AVAILABLE THROUGH THE INTERCONNECTING NETWORKS MAY NOT BE

ACCURATE, AND THAT THE COMPANY HAS NO ABILITY OR AUTHORITY OVER THE DATA OR INFORMATION. THE COMPANY MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE QUALITY, ACCURACY, OR VALIDITY OF THE DATA OR INFORMATION RESIDING ON OR PASSING THROUGH THE INTERNCONNECTING NETWORKS. USE OF DATA OR INFORMATION OBTAINED FROM OR THROUGH COMPANY SERVICES IS AT THE SOLE RISK OF CUSTOMER.

f. Third Party Licenses. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE COMPANY MAKES A REASONABLE EFFORT TO PROVIDE CUSTOMER WITH TECHNOLOGIES, DEVELOPMENTS, AND INNOVATIONS (COLLECTIVELY "TECHNOLOGIES"), PART OF WHICH ARE BEING LICENSED OR CO-BRANDED FROM OR BY THIRD PARTY ENTITIES. HOWEVER, THE COMPANY MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE QUALITY, ACCURACY, RELIABILITY, VALIDITY, OR CONTINUED EXISTENCE OF ANY OR ALL ASPECTS OF SUCH TECHNOLOGIES. MOREOVER, THE COMPANY SPECIFICALLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR SUCH TECHNOLOGIES. FURTHERMORE, CUSTOMER WILL NOT HOLD THE COMPANY, ANY THIRD PARTY ENTITY RELATED TO THE COMPANY (INCLUDING THIRD PARTY VENDORS), OR THE COMPANY'S EXECUTIVES, DIRECTORS, OFFICERS, ATTORNEYS, MANAGERS, EMPLOYEES, CONSULTANTS, CONTRACTORS, AGENTS, PARENT COMPANIES, SUBSIDIARIES AND AFFILIATES LIABLE IN ANY WAY FOR THE REVOCATION OF ANY LICENSE, WHICH HAS BEEN LICENSED TO THE COMPANY FROM OR BY THIRD PARTIES, THAT RESULTS IN ANY ACTUAL OR POTENTIAL HARM, DAMAGE, COST, EXPENSE, OR OTHERWISE TO CUSTOMER, CUSTOMER'S BUSINESS, CUSTOMER'S AFFILIATES, CUSTOMER'S CUSTOMERS, OR ANYONE OR ANYTHING RELATED TO CUSTOMER. THE USE OF THE TECHNOLOGIES OBTAINED FROM OR THROUGH THE COMPANY, OR ANY OTHER REFERRED THIRD PARTY, WHETHER DIRECTLY OR INDIRECTLY, IS AT THE SOLE RISK OF CUSTOMER.

g. Non-Company Products. REGARDING NON-COMPANY PRODUCTS AND SERVICES, ANY MENTION THEREOF, OR ANY STATEMENT RELATED THERETO, BY THE COMPANY, ANY THIRD PARTY ENTITY RELATED TO THE COMPANY (INCLUDING THIRD PARTY VENDORS), OR THE COMPANY'S EXECUTIVES, DIRECTORS, OFFICERS, ATTORNEYS, MANAGERS, EMPLOYEES, CONSULTANTS, CONTRACTORS, AGENTS, PARENT COMPANIES, SUBSIDIARIES, AND/OR AFFILIATES IS FOR INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE AN ENDORSEMENT OR RECOMMENDATION BY THE COMPANY OR THE INDIVIDUALS AND ENTITIES LISTED IN THIS SECTION. THE COMPANY DISCLAIMS ANY AND ALL LIABILITIES FOR ANY REPRESENTATION OR WARRANTY MADE BY THE VENDORS OF SUCH NON-COMPANY PRODUCTS OR SERVICES.

h. The Web Site. THE SERVICES, INFORMATION, AND DATA (COLLECTIVELY THE "INFORMATION") MADE AVAILABLE ON THE COMPANY'S WEB SITE ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND. THE COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATION AND WARRANTY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY WILL HAVE ABSOLUTELY NO LIABILITY IN CONNECTION WITH THE INFORMATION, INCLUDING ANY LIABILITY FOR DAMAGE TO THE WEB SITE USER'S COMPUTER, ANY HARDWARE, DATA, INFORMATION, MATERIALS, AND BUSINESS RESULTING FROM THE INFORMATION, OR THE LACK OF INFORMATION, AVAILABLE ON THE COMPANY'S WEB SITE. THE COMPANY WILL HAVE NO LIABILITY FOR:

(i) ANY AND ALL LOSSES OR INJURIES CAUSED, IN WHOLE OR IN PART, BY THE COMPANY'S ACTIONS, OMISSIONS, OR NEGLIGENCE, OR FOR CONTINGENCIES BEYOND THE COMPANY'S CONTROL IN PROCURING, COMPILING, OR DELIVERING THE INFORMATION;

(ii) ANY AND ALL ERRORS, OMISSIONS, OR INACCURACIES IN THE INFORMATION REGARDLESS OF HOW CAUSED, OR DELAYS OR INTERRUPTIONS IN DELIVERY OF THE INFORMATION; OR



(iii) ANY DECISION MADE, OR ACTION TAKEN OR NOT TAKEN, IN RELIANCE UPON THE INFORMATION FURNISHED ON THE WEB SITE. THE COMPANY MAKES NO WARRANTY, REPRESENTATION, OR GUARANTY AS TO THE CONTENT, SEQUENCE, ACCURACY, TIMELINESS, OR COMPLETENESS OF THE INFORMATION ON THE WEB SITE, OR THAT THE INFORMATION IS RELIABLE FOR ANY REASON. THE COMPANY MAKES NO WARRANTY, REPRESENTATION, OR GUARANTY THAT THE INFORMATION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY DEFECTS CAN BE CORRECTED. CUSTOMER WILL MAKE NO CLAIM, COMPLAINT, OR PROCEEDING AGAINST THE COMPANY FOR ANY OR ALL PORTIONS OF THE WEB SITE THAT MAY REQUIRE THE DOWNLOADING OF WEB SITE COOKIES FOR CUSTOMER TO ACCESS SUCH PORTIONS OF THE WEB SITE. FOR THE PURPOSES OF THIS SECTION, "THE COMPANY" INCLUDES THE COMPANY'S DIVISIONS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, PARENT COMPANIES, AND THEIR (INCLUDING THE COMPANY'S) EXECUTIVES, DIRECTORS, OFFICERS, ATTORNEYS, MANAGERS, EMPLOYEES, CONSULTANTS, CONTRACTORS, AGENTS, AFFILIATES, THIRD-PARTY PROVIDERS, MERCHANTS, LICENSORS AND THE LIKE.

## 8. PAYMENT

a. **Billing Cycle.** The billing or invoicing of Customer's Account may vary depending on various factors, including the date on which Customer becomes a customer of the Company and the particular Company Services that the Company is providing Customer. The Company's provision of Company Services to Customer for one (1) month will constitute one "Billing Cycle" which will begin on the first day, and end on the last day, of each calendar month. The Billing Cycle will continue to renew each month until the Company receives a "Cancellation Request" from Customer in accordance with this TOU. The first Billing Cycle for Customer's Account will commence on the day that the Company receives Customer's Order Form. If the Company receives the Order Form on or after the first day of a calendar month, then the Company may pro-rate accordingly the charges and fees for that month. The Company reserves the right to modify the Billing Cycle, at any time and without prior notice, so that Customer may be billed or invoiced for Company Services more or less frequently. Any period during which Customer's account is suspended or on hold will be included in the Billing Cycle.

b. **Payment Due.** Customer must ensure that the Company receives full payment for Company Services before the beginning of each Billing Cycle, including the initial Billing Cycle. Customer is solely responsible for ensuring that the Company receives payment before the applicable due date. The Company may, at its sole discretion, decide not to provide Customer with Company Services until the Company receives full payment in advance.

c. **Methods of Payment.** Methods of payment accepted by the Company are check, money order, or credit card. If Customer is paying by check or money order, the payment must be sent to the Company's address as it appears on the Web Site. The Company will charge Customer a fifteen dollar (\$15.00) service charge for each check that is not honored or for each credit card payment that is charged back.

d. **Overages.** The Company may charge Customer for any "Overages," which includes excessive bandwidth and disk space use (which is any use of bandwidth or disk space above the allowance specified in Customer's particular service package). Customer is solely responsible for preventing any and all Overages on a daily basis. Customer acknowledges and agrees that the Company has no obligation to warn Customer about any pending or actual Overage.

e. **Delinquent Customer's Account.** Customer's Account will be deemed "Delinquent" if the Company does not receive payment for Company Services within five (5) days after the commencement of a Billing Cycle.

f. **Penalties for Delinquent Customer's Account.** A Customer's Account that is Delinquent may be put on hold and Customer may be prevented from using Customer's Account. Delinquent Customer's Account may have visitors redirected from Customer's web site to the Company's technical support web page. A Delinquent Customer's Account that is unpaid for an entire Billing Cycle may, at the Company's sole

discretion, have any or all files archived, purged, or otherwise deleted. Customer's Account will continue to accrue charges (including interest charges) while Customer's Account is on hold.

g. Reconnection Charge. The Company may charge Customer, and Customer must pay, a reconnection service charge of fifty dollars (\$50.00) to remove the hold on Customer's Account and to remove Customer's Account from Delinquent status.

h. Amendments. The Company may amend the fees and/or charges for any of the Company Services without prior notice to Customer.

i. Applicable Taxes. The Company will charge Customer, and Customer must pay to the Company, all applicable taxes, including any retroactive tax on past fees or charges (whether already paid or not) in cases where the Company is under a legal obligation to collect such tax from Customer. Customer is solely responsible for any and all other taxes, which Customer is under a legal obligation to pay.

## 9. CANCELLATION REQUESTS

a. Automatic Renewal. The TOU will bind Customer, and Customer will be deemed to have accepted the TOU, upon the Company's receipt of Customer's Order Form. The TOU, and the particular service agreement(s) executed between Customer and the Company (if any), will automatically renew upon expiration of the relevant Billing Cycle until Customer makes a proper "Cancellation Request."

b. Cancellation Request Defined. "Cancellation Request" means Customer's request, in accordance with this TOU, to the Company to cease the provision of Company Services for the particular Customer's Account. For a valid Cancellation Request that the Company will deem effective, Customer must make any and all Cancellation Requests according to the following specifications:

(i) Monthly Basis. If Customer pays on a monthly basis, a Cancellation Request must be given by writing via facsimile, first class postal service (postage prepaid), or by prepaid overnight commercial courier delivered to the Company's Customer Service Department. Customer may also make a Cancellation Request by telephone call to the Company's Customer Service Department at 604-780-0359 during the hours of 8:00 a.m. PST to 5:00 p.m. PST, Monday to Friday (excluding holidays). The Cancellation Request must be received by the Company before 5:00 p.m. PST on the last business day of the particular month in order for the Cancellation Request to be processed by the end of the same month; otherwise, the Company will automatically renew Customer's Account for the next month or Billing Cycle. **CHARGES ARE NOT PRO-RATED WHEN CUSTOMER TERMINATES CUSTOMER'S ACCOUNT WITH THE COMPANY.**

(ii) Non-Monthly Basis. If Customer pays on a non-monthly basis (three (3), six (6), twelve (12), or other number of multiple months), a Cancellation Request for Customer's Account must be given by writing via facsimile, first class postal service (postage prepaid), or by prepaid overnight commercial courier delivered to the Company's Customer Service Department (address available on the Web Site). Customer may also make a Cancellation Request by telephone call to the Company's Customer Service Department at 604-780-0359 during the hours of 8:00 a.m. PST to 5:00 p.m. PST, Monday to Friday (excluding holidays). The Cancellation Request must be received by the Company before 5:00 p.m. PST, fifteen (15) days before the anniversary date of when the Company received Customer's Order Form for the Cancellation Request to be processed before such anniversary date; otherwise, the Company will automatically renew Customer's Account, and Customer will be bound and responsible, for the next applicable period. **CHARGES ARE NOT PRO-RATED WHEN CUSTOMER TERMINATES CUSTOMER'S ACCOUNT WITH THE COMPANY.**

c. Full Payment Requirement. Customer's Account must be PAID IN FULL before any Cancellation Request will be considered effective.

## 10. IP ADDRESSES

The Company maintains control and ownership of any and all IP numbers and addresses that may be assigned to Customer, and the Company reserves the right to change or remove, at the Company's sole discretion, any and all IP numbers and addresses.

#### 11. INTELLECTUAL PROPERTY

a. Company Web Site. Customer must not, without the Company's express written consent, copy, reproduce, republish, or otherwise use any material, in whole or in part, that is located on the Web Site, including the Company's sales and marketing materials.

b. Trademark & Copyright Prohibition. Customer must not, without the Company's express written consent, use any of the Company's trademarks, service marks, copyrighted materials, or other intellectual property.

c. Misrepresentation. Customer must not, in any way, misrepresent Customer's relationship with the Company, attempt to pass itself off as the Company, or claim that Customer is the Company.

#### 12. CUSTOMER'S PRIVACY

Except as provided herein, the Company will keep confidential Customer's information or data collected as required by applicable laws. Customer understands, acknowledges, and agrees that under urgent or emergency circumstances, and/or as required by court order, official authority, police or other law enforcement authority, or any applicable law or regulation, the Company may make available Customer's information or data to the relevant third party. Customer further agrees that the Company may disclose and share Customer's information or data with the Company's parent companies, affiliates, and subsidiaries for internal purposes, including uses related to Company Services, improvements to Company Services, extending special offers to Customer, and referral commissions. Customer understands, acknowledges, and agrees that Customer's administrative contact information in relation to Customer's domain name registration is public information and the Company is not, and will not, be obligated to safeguard such information and data from any third party.

#### 13. ASSIGNMENT AND AGENTS

a. Assignment. The rights and liabilities of both Customer and the Company (collectively "the Parties") under the TOU will bind and inure to the benefit of the Parties' respective successors, executors, and administrators, as the case may be. However, Customer may not assign or delegate Customer's rights or obligations under the TOU, Order Form, or other agreement for Company Services executed between the Parties, either in whole or in part, without the prior written consent of the Company.

b. Bound as Principal. Customer agrees that Customer will always be bound as a principal to the TOU even if any contract or service agreement, including any Order Form for domain name registration or web hosting, is executed by an agent of Customer.

#### 14. MINIMUM AGE REQUIREMENT

a. Customer's Warranty. Customer represents and warrants that Customer is at least 18 years of age.

b. Parent or Guardian. Customer understands and acknowledges that any individual under the age of 18 years ("Minor") must have a parent or guardian accept the TOU in order for the Minor to become a Customer.

c. Parent or Guardian Primarily Liable. A parent or guardian who accepts the TOU on behalf of a Minor will be primarily liable for ensuring complete and proper compliance with the TOU, including the timely and full payment of the charges for Company Services.

d. Continuation of Parent or Guardian's Liability. A parent or guardian who accepts the TOU on behalf of a Minor will continue to be primarily liable for the obligations mentioned in the TOU even when the Minor has attained the age of 18, unless the parent or guardian obtains the Company's express written consent to the contrary.

e. Invalid Acceptance (Null & Void). ANY ACCEPTANCE OF THE TOU BY AN INDIVIDUAL UNDER THE AGE OF 18 (MINOR) WILL BE DEEMED INVALID AND THE TOU WILL BE DEEMED NULL AND VOID AS BETWEEN THE COMPANY AND THE MINOR TO THE EXTENT THAT THE COMPANY WILL NOT BE HELD LIABLE IN ANY WAY AS A RESULT OF THE MINOR'S AGE OR LEGAL INCAPACITY OR THE MINOR'S USE OF THE COMPANY SERVICES.

#### 15. GOVERNING LAW AND SEVERABILITY

Any agreement, including the TOU, Order Form, or other agreement for Company Services, between the Company and Customer, will be governed by and construed in accordance with the laws of the Province of British Columbia, Canada without reference to its conflicts of laws principles. Customer agrees that any litigation or arbitration between Customer and the Company will take place in such jurisdiction, and Customer consents to personal jurisdiction and venue in that jurisdiction. If any provision or portion of the agreement is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of that agreement will continue in full force and effect.

#### 16. FORCE MAJEURE

Customer understands, acknowledges, and agrees that the Company will not be liable for delays in its performance of the TOU, Order Form, or other agreement for Company Services caused by circumstances beyond the Company's reasonable control, including acts of God, wars, insurrection, civil commotions, riots, national disasters, earthquakes, strikes, fires, floods, water damage, explosions, shortages of labor or materials, labor disputes, transportation problems, accidents, embargoes, or governmental restrictions (collectively "Force Majeure"). The Company will make reasonable efforts to reduce to a minimum and mitigate the effect of any Force Majeure. Notwithstanding anything contained elsewhere herein, lack of finances will not be considered an event of Force Majeure nor will any event of Force Majeure suspend any obligation of Customer for the payment of money due hereunder.

#### 17. WAIVER, MODIFICATION, & AMENDMENT

Any waiver, modification, or amendment of any provision of the TOU, Order Form, or other agreement for Company Services, initiated by Customer, will be effective only if accepted in writing and signed by an authorized representative of the Company.

#### 18. INDEPENDENT CONTRACTORS

Nothing in this Agreement will be construed as creating a partnership or relationship of employer and employee, principal and agent, partnership or joint venture between the Parties. Each Party will be deemed an independent contractor at all times and will have no right or authority to assume or create any obligation on behalf of the other Party, except as may be expressly provided herein.

#### 19. CONSTRUCTION & INTERPRETATION

Wherever in this TOU the masculine, feminine, or neuter gender is used, it will be construed as including all genders, and wherever the singular is used, it will be deemed to include the plural and vice versa, where the context so requires. The term "including," wherever used in any provision of the TOU, means "including but without limiting the generality of any description preceding or succeeding such term." The division of the TOU into sections/paragraphs, and the insertion of headings/captions, are for convenience of reference only and will not affect the construction or interpretation of the TOU. Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the construction or interpretation of the TOU.

#### 20. COMPLETE AGREEMENT & EXCLUSIVITY

The TOU, in addition to the Order Form and any other specific agreement for Company Services between the Company and Customer, and including the recitals contained in this TOU, constitute the complete understanding and agreement between Customer and the Company. Except when expressly agreed to the contrary in signed writing by an authorized representative of the Company, the TOU

supersedes any other written (including digitized/computerized) agreement, oral agreement, and/or agreement by conduct. This TOU, the Order Form, or any other specific agreement for Company Services between the Company and Customer will each be exclusively between the Company and Customer only and will not confer any rights in any third party except as otherwise expressly provided in the TOU.

#### 21. INDEPENDENT LEGALADVICE

Customer represents and warrants that Customer has read this TOU thoroughly, has had sufficient opportunity to seek legal counsel or has waived such opportunity, and therefore clearly understands and agrees to all the terms and conditions contained in this TOU.