

# Provision of Service Agreement



Webcon, Inc. (hereinafter WEBCON) agrees to provide the services and/or products (hereinafter SERVICES) detailed on a Schedule "A", to the undersigned (hereinafter the CLIENT), in accordance with the following terms and conditions set forth in this agreement and in Schedule "A" hereto (hereinafter collectively, the AGREEMENT):

**A. Service**

Any SERVICES provided by WEBCON to the CLIENT are for the sole use of the CLIENT. WEBCON does not warrant that the SERVICES are suitable for use by any person or entity other than the CLIENT.

**B. Cost**

The cost payable by the CLIENT for the SERVICES shall be set forth in a Schedule "A".

**C. Terms of Payment**

1. All payments shall be made by the CLIENT in accordance with the payment schedule set forth in Schedule "A". Failure by the CLIENT to provide payment to WEBCON in accordance with this AGREEMENT may result in the termination or suspension of the SERVICES until such time as payment is received by WEBCON.
2. The amount of each invoice must be paid in full upon its receipt by the CLIENT unless otherwise provided for in Schedule "A".
3. Past due accounts shall bear interest at the rate of 20% per annum, accrued monthly.
4. If full payment is not received within thirty (30) days after WEBCON notifies the CLIENT of breach of contract, any CLIENT-owned equipment in the possession of WEBCON, may be withheld by WEBCON until full payment is received. If the reasonable value of the equipment exceeds the amount owing to WEBCON, WEBCON shall return such excess amount to the CLIENT.

**D. Term**

This AGREEMENT can only be terminated in writing by either party hereto, in accordance with Parts I and J.

**E. Taxes**

Payment of all sales taxes applicable to the SERVICES (i.e. GST and PST), and any new or previously existing taxes levied by the Federal Government of Canada or the Provincial Government of Ontario during the contract period that are or become applicable to the SERVICES, is the responsibility of the CLIENT.

**F. Limitation of Liability**

1. Unless otherwise specifically provided for in this AGREEMENT, WEBCON shall not be liable to the CLIENT nor to any third party for:
  - a) any indirect, incidental, special, punitive or consequential losses or damages, including loss of profits, loss of earnings and loss of business opportunities resulting indirectly out of, or otherwise arising in connection with, the CLIENT's use of or the provision by WEBCON of the SERVICES;
  - b) any losses, claims, damages, expenses, liabilities or costs (including legal fees) resulting directly or indirectly out of, or otherwise arising in connection with, any claim that the CLIENT's use of the SERVICES infringes copyright, patent, trade-mark, trade secret, confidentiality, privacy, or other industrial or intellectual property rights or contractual rights of any third party;

unless such specific liability is provided for in Schedule "A".

2. The limitation of liability in Part F(1) above applies to any act or omission of WEBCON, its directors, officers, employees or agents, whether or not such act or omission would otherwise be a cause of action in contract, tort, or any other doctrine of law.
3. WEBCON shall not be liable for any breach of this AGREEMENT due to a cause beyond its control. To wit, any act by a third party, without the express consent of WEBCON, that causes WEBCON to breach this AGREEMENT shall not be basis for finding WEBCON liable for such breach.
4. NOTWITHSTANDING ANY SPECIFIC CLAUSE TO THE CONTRARY IN SCHEDULE "A", WEBCON SHALL NOT BE LIABLE FOR ANY DAMAGE TO OR FAILURE OF THE SERVICES AS A RESULT OF YEAR 2000 COMPLIANCE ISSUES, VIRUS INFECTION AT THE CLIENT'S SITE OR NETWORK SECURITY ISSUES RESULTING FROM THE CLIENT'S USE OF THE SERVICES, UNLESS A SERVICE THAT SPECIFICALLY WARRANTS AGAINST THE FOREGOING IS REQUESTED AND IS DETAILED IN SCHEDULE "A".
5. WEBCON's liability for negligence or the breach of this AGREEMENT shall in no event be greater than the total amount paid by the CLIENT to WEBCON for the service period (equal to each billing interval) that gave rise to the claim.

**G. Limited Warranty**

NOTWITHSTANDING INDIVIDUALLY WARRANTED SOFTWARE PROGRAMS WRITTEN OR HARDWARE MANUFACTURED BY



WEBCON, ALL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITHOUT WARRANTY OF ANY KIND. WEBCON DOES NOT WARRANT UNINTERRUPTED PROVISION OR OPERATION OF THE SERVICES. WEBCON DOES NOT WARRANT THAT ANY DATA OR FILES SENT BY OR TO THE CLIENT WILL BE TRANSMITTED IN UN-CORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS, WARRANTIES, ENDORSEMENTS AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE OR NON-INFRINGEMENT AND ANY IMPLIED REPRESENTATION, WARRANTIES AND CONDITIONS OF FITNESS FOR PURPOSE AND MERCHANTABILITY QUALITY AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY EXCLUDED.

### H. General Provisions

1. This AGREEMENT shall be governed by and construed according to the laws in force in the Province of Ontario, Canada.
2. This AGREEMENT constitutes the entire agreement and understanding between WEBCON and the CLIENT with respect to the subject matter of this AGREEMENT and shall supersede and replace all prior contracts, agreements, and understandings, written or oral, regarding such subject matter including, without limitation, all previously signed Agreements.
3. In the event that any portion of this AGREEMENT is held to be unenforceable, the unenforceable portion shall be re-constructed in accordance with the applicable law so as to be mutually agreeable to both parties and the remainder of the provisions shall remain in full force and effect. If no mutually agreeable solution can be found within thirty (30) days, then either party may invoke their right to terminate this agreement in accordance with Part I. WEBCON's failure to insist upon or enforce strict performance of any provision of this AGREEMENT does not mean that WEBCON has waived any provision or right in this AGREEMENT. Neither the course of conduct between WEBCON and the CLIENT nor trade practice shall act to modify any provision of this AGREEMENT. The CLIENT may not assign or transfer this AGREEMENT.
4. The provisions of Part F and Part H(7) will survive termination and expiration of this AGREEMENT.
5. Multiple Users : The CLIENT acknowledges that this AGREEMENT is being executed on behalf of all persons who use the SERVICES. The CLIENT has sole responsibility for ensuring that all such users understand and comply with the terms and conditions of this AGREEMENT. The CLIENT further acknowledges and agrees that it is solely responsible and liable for any and all breaches of the terms and conditions of this AGREEMENT, whether such breach is the result of use of the SERVICES by the CLIENT or any other user of the SERVICES.
6. Ownership of Addresses : WEBCON, or its suppliers, may be the owner of any or all network "addresses" supplied to the CLIENT as part of the SERVICES, including, but not limited to, IP addresses, email addresses and website addresses (URLs). WEBCON may, for technical reasons, be required to modify or change any address not owned by the CLIENT at any point in time and shall in no way be required to compensate the CLIENT for such changes. Any specific details relating to the CLIENT's ownership of addresses used during the provision of the SERVICES shall be detailed in Schedule "A".
7. Privacy: WEBCON's administrators or their authorized agents, may, as they see fit, at any time, monitor, examine or read any connection, transmission or data sent from or received by any of WEBCON's equipment. Information so gathered will be used primarily for statistical and diagnostic purposes. No confidential information will be released to any third party unless WEBCON is required to do so by law. From time to time, some non-confidential information may need to be released to a third party in order to continue to provide quality services. Full details of WEBCON's privacy policy may be found on WEBCON's Internet website (<http://www.webcon.ca>).
8. Access to CLIENT's premises; Right to change SERVICES : The CLIENT authorizes WEBCON and its employees, agents, contractors, and representatives to enter the CLIENT's premises in order to install, maintain, inspect, repair, upgrade, replace and remove the SERVICES, at a time mutually agreeable to both parties.
9. Ownership of Deliverables : Any product developed by WEBCON specifically for the CLIENT shall, by default, remain the intellectual property of WEBCON. Unless explicit transfer of rights to the CLIENT is provided with said product, or alternative licensing arrangements are made, then an implicit unrestricted permanent license to use the product is granted to the CLIENT.

### I. Termination and Expiration

1. Subject to Section 2(a), below, WEBCON shall provide the SERVICES to the CLIENT until such time as the CLIENT provides a written request to cancel the SERVICES.
2. The CLIENT agrees to be bound by the following terms upon termination of this AGREEMENT:
  - (a) Termination Rights: The CLIENT may terminate this AGREEMENT at any time by providing WEBCON with no less than thirty (30) days written notice of such termination. If the CLIENT is in breach of Part J of this AGREEMENT, WEBCON shall be entitled to terminate the AGREEMENT immediately and without notice to the CLIENT. Otherwise, WEBCON may terminate this AGREEMENT upon thirty (30) days written notice to the CLIENT.
  - (b) CLIENT's Obligations Upon Termination: The CLIENT agrees that upon termination of this AGREEMENT:
    - (i) the CLIENT will pay WEBCON, in full, for its use of the SERVICES up to the date of termination of this AGREEMENT, or the date on which the SERVICES have been disconnected and the CLIENT provides access for WEBCON to remove the associated equipment, whichever is later.

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- (ii) the CLIENT will ensure the return of all equipment included in the SERVICES to WEBCON, and will return or destroy all copies of any software/data licensed to the CLIENT by WEBCON for use during the term of this AGREEMENT. The CLIENT will allow and require WEBCON or it's agents to access the CLIENT's premises within ten (10) business days of the termination date to remove said equipment.

### J. Acceptable Use Policy

The CLIENT agrees to comply with such policies respecting permitted and prohibited use of the SERVICES as may be posted to WEBCON's website from time to time. Without limiting the generality of the foregoing, the CLIENT agrees that it will not use the SERVICES to directly, or indirectly:

- (a) invade another person's privacy; unlawfully use, possess, post, transmit or disseminate obscene, profane or pornographic material; post transmit distribute or disseminate content which is unlawful, threatening, abusive, libelous, slanderous, defamatory or otherwise offensive or objectionable; unlawfully promote or incite hatred; or post, transmit or disseminate objectionable information, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any municipal, provincial, federal or international law, order or regulation.
- (b) access any computer, software, data, or any confidential, copyrighted or patent protected material of any other person, without the knowledge and consent of such person;
- (c) alter, modify or tamper with the SERVICES;
- (d) restrict, inhibit or otherwise interfere with the ability of any other person to use WEBCON's services, including, without limitation: posting or transmitting any information or software which contains a virus, lock, key, bomb, worm, trojan horse or other harmful or debilitating feature, distributing mass or unsolicited email ("Spamming"), or otherwise generating levels of traffic sufficient to impede others' ability to send or retrieve information via WEBCON's equipment;
- (e) resell the SERVICES. Without limiting the foregoing, the CLIENT agrees that they will neither use the SERVICES for operation of an Internet Service Providers' business nor for any other business enterprise in competition with WEBCON.

In addition to WEBCON's termination rights as set out elsewhere in this AGREEMENT, engaging in one or more of these activities may result in termination of this AGREEMENT.

### K. Amendments

WEBCON may change, modify, add or remove portions of this AGREEMENT at any time. WEBCON will notify the CLIENT of any changes to this AGREEMENT by posting notice of such changes on WEBCON's website, and by sending notice via e-mail or postal mail to the CLIENT. The CLIENT's continued use of the SERVICES following notice of such change, modification or amendment indicates agreement to and acceptance of the AGREEMENT as amended. If the CLIENT does not agree to any modification of this AGREEMENT, the CLIENT must cease using the SERVICES and notify WEBCON that it is terminating this AGREEMENT within thirty (30) days.

The CLIENT has read this AGREEMENT and understands and agrees to its terms and conditions.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_