# WEB HOSTING AGREEMENT

This agreement is entered into as of the <day> day of <month>, <year>

BETWEEN

TOTAL WEBSITE SOLUTIONS INC

(hereafter known as "Provider")

with its place of business for the purpose of this agreement at

7315 – 149 Avenue, Edmonton, Alberta, Canada T5C 2V5

– AND –

<YOUR BUSINESS NAME>

(hereafter known as "Client")

with its place of business for the purpose of this agreement at

<Your Business Address>

WHEREAS

The Provider and the Client wish to set out the conditions between the parties in order to commence the Provider's web hosting services to the Client.

NOW THEREFORE, the Provider and the Client agree as follows:

1. DEFINITIONS
   1.1. "Provider" refers to TOTAL WEBSITE SOLUTIONS INC, its agents and authorized representatives which are also referred to using "we", "us", "our" and "ours".

   1.2. "Client" refers to <YOUR BUSINESS NAME>, its agents and authorized representatives which are also referred to using "they", "them", "their" and "theirs".

   1.3. "Web hosting services" refers to the services which allow the Client to make their own website accessible via the World Wide Web.

   1.4. "Server computers" are computers owned, leased, or rented by the Provider for use by the Client to host their own website.

   1.5. "Content" refers to all text, pictures, sound, graphics, video, links, and other data stored by the Client on our server computers.

   1.6. "Website" refers to the pages presenting the Content stored by the Client on our server computers.

2. CLIENT RESPONSIBILITIES

   Effective use of services provided by us presumes a certain degree of knowledge and skill on the part of the Client. We will not be held responsible for their inability to use our services due to their lack of the requisite knowledge and skills.

3. SERVER ABUSE

   Any attempt to undermine or cause harm to a server, or Client, of ours is strictly prohibited. This includes, but is not limited to, attempting to gain access to password files other than Client's own, attempting to gain unauthorized access to other accounts on Client's server, or

anything that causes server malfunction. Failure to comply is subject to immediate account deactivation without refund.

4. USAGE POLICY

The Client will use the web hosting services in a manner consistent with all local, provincial and federal regulations and laws. We reserves the right to suspend or cancel the Client's access to any or all services provided by us when we decide that their account has been inappropriately used.

5. PROHIBITED SERVICES

The following content and activities may not be displayed or promoted by the Client nor associated in any way with the Client's account or the Provider's services. The Provider shall be the sole arbiter as to what constitutes violation of this provision.

- Transmission, storage, or presentation of any information, data or material in violation of any Canadian Federal, Provincial or local law.
- Copyrighted material used without permission.
- Material or activities judged by the Provider to be threatening, obscene, disparaging, or hate-related.
- Material protected by trade secret or other statute.
- Pornography, nudity, erotica, and sex-related merchandising, including sites that may infer sexual content, or link to adult content elsewhere.
- Content that promotes any illegal or prohibited activity.
- Content that may be damaging to the Provider's servers or to any other server on the Internet.
- Pirated software (warez).
- IRC, IRC Bots, IRC BNC, etc.
- Promotion or sale of unsolicited or bulk e-mail (SPAM) software or services.
- Unsolicited or bulk e-mail or newsgroup posts (SPAM) which references and/or is traceable to he Provider and/or any Client in any way.
- Illegally distributed MP3 media.
- Harassing, annoying, or otherwise interfering with any person's, group's, or organization's use or enjoyment of the Internet experience.
- Links or reference to any of the above.

6. UNAUTHORIZED USE OF OTHER PEOPLE'S ACCOUNTS OR COMPUTERS

We will strongly react to any use or attempted use of an Internet account or computer without the owner's authorization. Such attempts include "internet scamming" (tricking other people into releasing their passwords), password robbery, security hole scanning etc.

Any unauthorized use of accounts or computers by a Client, whether or not the attacked account or computer belongs to us, will result in action against the attacker. Possible actions include warnings, account suspension or cancellation, and civil or criminal legal action, depending on the seriousness of the attack.

7. ABUSE OF UNLIMITED TRAFFIC AND/OR UNLIMITED STORAGE

To maintain the integrity of our services, the following limitations apply to all sites owned by the Client and without an imposed limit on monthly traffic volume and/or storage space:

7.1      The site cannot be used as offsite storage for electronic files (storing files not linked to any page of the site).

7.2      The site cannot be used as a download center (more than 50% of traffic arises from file downloads).

7.3      The site should not contain scripts running from their domain used on other domain.

Web sites that are found to violate the above limitations are subject to warning, suspension or cancellation at the discretion of our management.

We will be the sole arbiter as to what constitutes a violation of this provision

## 8. CONTENT OWNERSHIP

All contents stored by the Client shall at all times remain the property of the Client. The Client grants to the Provider non-exclusive, world-wide licence to the content only to the extent necessary for the Provider to host the website.

## 9. PAYMENT POLICIES

All accounts are set up on a pre-pay basis. Setup fees may be charged for all new accounts and major account changes. All pricing is guaranteed for the term of pre-payment. We reserve the right to change prices at any time. Any account not brought current within 7 days of e-mail notice or exceeding this time frame in any way is subject to suspension. The Client is responsible for all money owed on the account from the time it was established to the time that the Client notifies us in writing for a request for termination of services. Email notification will be sent to the Client prior to their hosting renewal date.

The Client is responsible to reimburse the Provider all bank charges caused by returned checks and declined credit card payments as well as the outstanding amount. The Provider reserves the right to bill the Client for special handling fees.

## 10. TERMINATION

The Client may terminate this agreement upon thirty (30) days written notice to the Provider either by email or fax.

The Provider may immediately terminate this Agreement for cause at any time without penalty. Causes justifying immediate termination include, but are not limited to: violation of any foreign, federal, state, or local law; non-payment of fees due; breach of this Agreement. The Provider may terminate this Agreement without cause at any time upon thirty (30) days written notice to the Client.

## 11. CANCELLATION AND REFUND

We reserve the right to cancel service at any time. All fees paid in advance of cancellation will be pro-rated and paid by us if we institute our right of cancellation. Extra costs resulting from any violation of policies will be billed to the Client (i.e. transfer, space etc.)

If the Client is not completely satisfied with our services or support within the first 30 days of this agreement, you will be given a full refund of the contract amount including setup fees but excluding overages. Domain Registration fees, reimbursed to us, are not refundable at all. If the web hosting plan includes a free domain name registration, an amount equal to the regular domain name registration fee will be charged upon contract cancellation.

For web hosting contracts of 3 months or less, the full contract amount less any domain registration fees and overages will be refunded if we are notified within the first 30 days following activation. No refund is available after the 30th day.

For web hosting contracts longer than three months, a refund equal to one half of the contract amount less any domain registration fees and overages will be given if we are notified prior to the first day of the second half of the contract term. For example, on a twelve month contract we must receive the notice of cancellation prior to the first day of the seventh month of the contract. No refunds will be given once the second half of the contract term has begun. This policy does not apply to any additional services such as overages, additional disk space, additional pop accounts, etc. Due to security concerns, all account cancellations must be done in writing via mail or fax with a valid signature of the primary contact of the account, account name, reason for cancellation. We also accept account cancellation submitted from the registered email address of the account holder. Phone requests will not constitute acceptance of any cancellation. If payment was made by check or bank transfer, payment will be made by company check within 15 days of receipt of cancellation.

12. LIMITATION OF LIABILITY

The Client agrees that neither the primary service Provider nor backend service Provider will be liable for any

(1) suspension or loss of the services, except to the limited extent that a remedy is provided under this agreement;

(2) interruption of business;

(3) access delays or access interruptions to the website(s) provided through or by the services;

(4) loss or liability resulting from acts of god;

(5) data non-delivery, mis-delivery, corruption, destruction or other modification;

(6) events beyond the control of the primary service Provider or backend service Provider; or

(7) loss or liability resulting from the unauthorized use or misuse of their account identifier or password.

The Client further agrees that neither the primary service Provider nor backend service Provider will be liable for any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, regardless of whether or not either the primary service Provider or backend service Provider have been advised of the possibility of such damages. In no event shall the maximum aggregate liability of either the primary service Provider or the backend service Provider exceed the total amount paid by the Client for the services for a one-month period, but in no event greater than one hundred dollars ($100.00). Because some provinces do not allow the exclusion or limitation of liability for consequential or incidental damages, in such provinces, the liability of the primary service Provider and/or backend service Provider shall be limited to the maximum extent permitted by law.

13. <u>INDEMNIFICATION</u>

The Client agrees to release, indemnify, and hold the primary service Provider and backend service Provider, our contractors, agents, employees, officers, directors and affiliates harmless from all liabilities, claims and expenses, including attorney's fees and court costs, for third party claims relating to their use of the services or arising under this agreement, including without limitation, infringement by the Client or someone else using their computer, of any intellectual property or other proprietary right of any person or entity, or from the violation of any term or condition of this agreement. When either the primary service Provider and/or backend service Provider may be involved in a suit involving a third party and which is related to the services under this agreement, either the primary service Provider and/or backend service Provider may seek written assurances from the Client in which they promise to indemnify and hold such parties harmless from the costs and liabilities described in this paragraph. Such written assurances may include the posting of performance bonds or other guarantees. Their failure to provide such assurances may be considered a breach of this agreement by the Client.

The Client agrees that the backend service Provider shall not be liable for the actions, inactions, negligence, or intentional misconduct of the primary service Provider. The Client acknowledges and agrees that neither the primary service Provider nor the backend service Provider are agents for one another. The Client agrees that they shall defend, indemnify, save and hold us harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against us, our agents, our Clients, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by the Client, their agents, employees or assigns. The Client agrees to defend, indemnify and hold us harmless against liabilities arising out of:

(1) any injury to person or property caused by any products sold or otherwise distributed in connection with our servers;

(2) any material supplied by the Client infringing or allegedly infringing on the proprietary rights of a third party;

(3) copyright infringement and

(4) any defective products sold to Client from our servers.

14. <u>DISCLAIMER OF WARRANTIES</u>

Neither the primary service Provider nor backend service Provider make any representations nor warranties of any kind whatsoever, express or implied, in connection with this agreement or the services, including but not limited to warranties of merchantability or fitness for a particular purpose, unless such representations and warranties are not legally excludable. Client understands and agrees that any material and/or data downloaded or otherwise obtained through the use of the service is done at their own discretion and risk and that they will be solely responsible for any damage to the Client's computer system or loss of data that results from the download of such material and/or data. No advice or information, whether oral or written, obtained by the Client from either the primary service Provider or backend service Provider shall create any warranty not expressly made herein. Some jurisdictions do not allow the exclusion of certain warranties, so some of the above exclusions may not apply to the Client.

## 15. <u>GOVERNING LAW</u>

This Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable in that Province and will be treated, in all respects, as an Alberta contract.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

TOTAL WEBSITE SOLUTIONS INC                    <YOUR BUSINESS NAME>

Per:_____            Per:_____

Title: Director                                 Title:_____

Witness: _____                  Witness: _____