

## NexiaWeb Internet Solutions General Terms & Conditions

### Definitions

“Our” or “We” refers to NexiaWeb Internet Solutions, its subsidiaries and affiliates.

“Service” and “Services” refer to the services provided by us and subscribed to by you under the Service Contract and may include, but is not limited to Website Hosting, and Commercial Internet Services.

“You” refers to the person or organization that uses or subscribes to our Service(s).

“Service Contract” means the agreement for Services to which these terms and conditions are attached and which govern the provision of such Service.

“Written Notice” refers to the transmission of any notices to the client and may be sent via Ground Mail, Electronic Mail, or Facsimile. Electronic or Facsimile transmission logs shall be considered proof of successful transmission.

### General

This Agreement sets forth the Terms and Conditions that apply to use of the Service by you. By using the Service, you agree to comply with all of the Terms and Conditions set out in this document.

We shall have the right at any time to change or modify the Terms and Conditions applicable to your use of the Services, or any part thereof, or to impose new conditions, including, but not limited to, adding fees and charges for use.

Such changes, modifications, additions or deletions shall be effective 30 days from the date the publication of such changes for existing customers, or immediately for new customers. Notice of such changes will be given by NexiaWeb as they occur, which may be given by any means including, but not limited to, Written Notice, telephone conversation or voice mail.

Any use of the Services by you after the effective date of such notice shall be deemed to constitute acceptance by you of such changes, modifications or additions.

Our Services are provided on the basis of, and are subject to, service, facility and equipment availability. We reserve the right not to provide one or more Services where necessary facilities, equipment or services are not available for any reason whatsoever.

### Term and Termination

The Services shall continue for an initial term as agreed between us and shall automatically renew at the end of the initial Term as set out by the terms of the Agreement unless terminated by either of us in accordance with these Terms and Conditions.

If you are dissatisfied with our service, or with any of our terms, conditions, rules, policies, guidelines, or practices in operating the Services, your sole and exclusive remedy is to terminate your Agreement with us upon at least 30 days prior Written Notice and discontinue using the Services.

We reserve the right to terminate any Services to you immediately and with prior Written Notice for cause in the event that you breach the terms of this Agreement. We may, at our sole discretion and upon prior Written Notice, suspend your Service in lieu of terminating this Agreement while we investigate the alleged breach of this Agreement.

## **Your Responsibilities**

While using the Service you must comply with applicable laws at all times. You assume total responsibility and risk for your and your authorized users' use of the Service.

You are responsible for paying all charges necessary to use and access the Service. We will recognize only you as the person authorized to accept, utilize, manage, modify or terminate the Service.

## **Privacy**

Our Privacy Policy sets out our obligations with respect to the safeguarding, collection and use of your personal information and is subject to modification from time to time by us upon at least 30 days prior Written Notice. Your personal information will never be sold or revealed to any third party other than for the purposes described below.

We collect and use personal information about you and your use of our Services ("Information"):

- (i) To consider initiating and to initiate, maintain and develop our relationship with you in connection with our offering and servicing of products and services;
- (ii) To administer billing and accounting services and security measures in relation to your business with us;
- (iii) To monitor your customer history.
- (iv) To comply with legal and regulatory requirements.

You consent to our collection from, verification with, communication to, any third party and our and their use of, Information for the purposes outlined above. You acknowledge that your name, address and telephone number are not considered confidential Information and may be disclosed by us.

You agree that we may disclose, with your written or verbal permission, information to:

- (v) A person involved directly or indirectly in supplying the Service to you, including, without limitation, our sales agents, to the extent the Information is required and used only for such purposes, including the efficient supply of Services to you, and provided that person is required to keep such Information confidential.

You also understand that without your permission we may reveal certain information regarding your account such as billing amounts, billing history, services provided, company contacts, or any other information regarding the accounting of your Services to:

- (vi) A person or organization retained by us to collect amounts which you owe us or to enforce our rights under these Terms and Conditions, if the Information is required for, and is to be used only for that purpose and that person is required to keep such Information confidential.
- (vii) A person or organization responsible for our accounting, book keeping or other financial services, if the Information is required for, and is to be used only for that purpose and that person is required to keep such Information confidential.
- (viii) Any party with whom we have business relations, or desire to have business relations, for then purposes of improving upon or enhancing the Services if the Information is required for, and is to be used only for that purpose and that person is required to keep such Information confidential.

We may also use Information in our records for as long as it is needed for the purposes described above and your consent remains valid after the termination of our relationship with you.

These Terms and Conditions are subject to the Privacy Laws in effect in the Province of Alberta.

### **Service Rates**

The prices for Service are made available in the Services Contract, and are subject to change provided 30 day written notice by NexiaWeb.

### **Invoices**

We will invoice you either annually, bi-annually, quarterly or monthly as set out in your services contract, 30 days in advance of the provision of Service, unless otherwise specified in these Terms and Conditions. The invoice will include, and you will be responsible for, any applicable provincial and federal taxes, as well as interest charges on overdue invoices.

You must bring invoice inquiries and disputes to our attention within 30 days of the invoice date and failure to do so will be deemed to be an admission that the entire contents of the invoice are accurate.

Invoices for other services shall be submitted as such services are completed.

### **Payment Terms**

Invoices are due on the date specified on the invoice. Interest will accrue on unpaid amounts as and from 30 days after the invoice date at the rate of 1.5% per month (19.56% per annum), subject to change provided 30 days written notice by NexiaWeb. Payment shall be made by cheque payable to NexiaWeb Internet Solutions. Should your financial institution for any reason reject a payment, you will be charged a fee of \$25.00. In the event that your account is allowed to become past due by 60 days or more, we may at our discretion, suspend your hosting services until such time as the outstanding balance is paid in full. We further reserve the right to charge an admin fee of \$25.00 for suspension and re-activation. Upon re-activation from a suspension of service, you are not reimbursed for lost Service time due to the suspension of Service.

### **Service Interruption**

We may suspend the Service at any time for any duration of time, without penalty or liability to ourselves, where necessary. You agree that it may be necessary for us to temporarily suspend our Service for technical reasons or to maintain our network, equipment or facilities. We shall not bear any liability whatsoever for:

- (i) any such suspensions of Services;
- (ii) the termination of Services pursuant to these Terms and Conditions;
- (iii) suspension or termination of Services due to your non-payment of amounts or deposits due;
- (iv) suspension or termination of Services due to your unlawful or improper use of facilities or Services by you;
- (v) your inability to access any Services;

### **Limitation of Liability**

The Service is provided on an "as is" and "as available" basis and use of the Service is at your own risk. We make no representations or warranties whatsoever, either express or implied, with respect to the Service or any service, merchandise or information provided through the Service, including without limitation any representation or warranty with respect to the network transmission capacity of

any common carriers used by us or the accuracy or quality of the Service. There is neither warranty of title, non-infringement nor any implied warranty of merchantability or fitness for a particular purpose. It is solely your and your authorized users' responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services and other information and the quality and merchantability of the Service and all merchandise and services provided through the Service generally.

Neither we nor our suppliers warrant that the Service will be uninterrupted or error free.

Without limiting the generality of the foregoing, we and our suppliers, and our respective directors, officers and employees (collectively, in this paragraph, "NexiaWeb Internet Solutions"), are not responsible or liable to you or third parties for any claim, loss, damages, liability or expenses you or others may suffer or incur as a result of, arising out of, or in any way connected with the Service, or any use of it or interruption in it, whether through act or omission, negligence or otherwise, and whether direct or indirect unless caused by the willful misconduct or negligence of NexiaWeb. Without limitation, NexiaWeb Internet Solutions is not liable for any incidental, special, consequential, punitive, aggravated or exemplary damages, or loss of use, data, business, income or profits, even if NexiaWeb Internet Solutions has been advised of the possibility of such claim, loss, damages, liability or expenses by you or others. You assume all responsibility and liability with respect to mistakes, omissions, interruptions, errors, defects, delays in operation or transmission, or any failure of performance. The limitations on liability contained in this Agreement shall survive the termination of this Agreement. Without limiting the generality of the foregoing, in no circumstances shall our liability to you exceed the outstanding balance of your prepaid hosting balance, prorated daily.

### **Your Indemnification of NexiaWeb Internet Solutions**

You shall indemnify and hold us and our directors, officers and employees harmless against all claims, loss, damages, liability or expenses that we and/or they may suffer or incur, directly or indirectly, arising out of, resulting from or in connection with your use of the Service. Indemnification includes, but is not limited to, claims by third parties, the installation, maintenance, and removal of any and all equipment, the violation by you of the Agreement in force from time to time, and legal fees, disbursements and all other reasonable costs incurred by us in connection with any legal, collection or other proceedings brought by us against you related to this Agreement.

### **Relationship**

The relationship between us constitutes that of independent contractors. You do not possess, nor are you able to distinguish yourself as having, any authority to act for or create any obligation of, or make any representation on behalf of or in our name. You shall not use, in any manner or circumstance whatsoever, trademarks, trade names, logos or designs owned or licensed by us.

As an independent contractor to you, NexiaWeb may from time to time need to be in communication with other third parties in regards to the Service and at such times will identify ourselves as agents to the Client. At no time shall NexiaWeb use, in any manner or circumstance whatsoever, trademarks, trade names, logos or designs owned or licensed by the Client, except in such cases where NexiaWeb has obtained written permission to do so.

### **Enurement / Assignment**

These Terms and Conditions are binding upon, and shall endure to, our benefit and that of our respective successors, heirs, executors, administrators, personal representatives and permitted assigns. You shall not assign or transfer your rights or obligations hereunder or otherwise in respect of the Service without our prior written consent.

## **Notice**

Any notice by you to us shall be submitted in writing by e-mail to: [support@nexiaweb.com](mailto:support@nexiaweb.com). Please visit our website <http://www.nexiaweb.com> for additional contact information.

## **Acts of God**

Neither of us shall be liable for any delay, interruption or failure in the performance of our obligations if caused by acts of God, declared or undeclared war, fire, flood, storm, slide, earthquake, power failure, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labor disputes, or other similar events beyond the control of the party affected that may prevent or delay such performance. If any such act or event occurs or is likely to occur, the party affected shall promptly notify the other, giving the particulars of the event. The party so affected shall use reasonable efforts to eliminate or remedy the event.

## **Unenforceable Provisions**

If any part of these Terms and Conditions is found to be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalid or unenforceable part only, without in any way affecting the remaining parts of these Terms and Conditions.

## **Governing Law**

The rights and obligations of the parties pursuant to these Terms and Conditions is governed by, and shall be construed in accordance with, the laws of the Province in which your designated billing address is situated, and the Federal laws of Canada applicable in said Province.

You may be subject to other local, provincial and national laws. You hereby irrevocably submit to the exclusive jurisdiction of the Courts of the Province of Alberta for any dispute arising under or relating to this Agreement and waive your right to institute legal proceedings in any other jurisdiction. We shall be entitled to institute legal proceedings in connection with any matter arising under this Agreement in any jurisdiction where you reside, do business or have assets.

## **Waiver**

No waiver of any of the provisions of these Terms and Conditions shall be deemed to constitute a waiver of any other provision nor shall such a waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

## **Entire Agreement**

These Terms and Conditions represent the complete Agreement and understanding between us with respect to the Service and supersede any other written or oral agreement.

Note: Product names and terms used throughout these Terms and Conditions are registered or pending trademarks of, or are licensed by, NexiaWeb Internet Solutions All other product and/or brand or company names mentioned in these Terms and Conditions or otherwise in connection with the Service are the trademarks of their respective owners.

## **Manner of Use**

You agree to use the Service in a courteous and cooperative manner so as to avoid abusing the Service or the custom, Netiquette and user etiquette in place from time to time. You also agree to respect the use of the Internet so that you do not violate the laws or affect the rights of others. You will not misuse proprietary information or property of others for your own purposes or otherwise and will not publish threatening or defamatory materials or any materials otherwise injurious to the business or reputation of others. In particular, without limiting the generality of the foregoing, you shall not do, nor permit any of your authorized users or other third parties to do, any of the following:

- restrict or inhibit any other user from using and enjoying their service;
- disclose private communications or disclose confidential information without permission to parties other than the intended recipient;
- post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, or profane information of any kind, including without limitation any transmissions encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, provincial, state, national or international law, including, without limitation, export control laws and regulations;
- impersonate another person when posting or transmitting messages;
- choose a user name for your email address which is protected by copyright, or other intellectual property right, without obtaining permission of the copyright or other right holder;
- choose a user name for your email address which is libelous, defamatory, obscene, threatening, abusive or hateful;
- post or transmit any information or software that you are aware contains a virus, worm, or other harmful component;
- upload, post, publish, transmit, reproduce, or distribute in any way, information, software or other material obtained through the Internet which is protected by copyright or other proprietary right, without obtaining the permission of the copyright owner or right holder;
- falsify user information provided to us or to other users of the Service in connection with the use of our Service;
- multiple logins, including, without limitation, logging in simultaneously from home and office, unless expressly provisioned through specific Internet access service packages;
- engage in account sharing, including, without limitation, permitting third parties to use your Service account and password;
- unauthorized attempts to use or gain access to any account or computer resource not belonging to you;
- use any means or device to obtain, or attempt to obtain, the Services with the intent to avoid the applicable charges;
- use any means or device to gain unauthorized access to, alter, or destroy (or any attempt thereof) the data or information of any other customers and/or their end users;
- engage in any activities that will cause a disruption of the Services (e.g. synchronized number sequence attacks) to other users and/or their end-users;
- engage in any activities that will damage the systems of, or cause a disruption of Internet services to, third parties;
- spamming or other advertising that is objectionable to us in our sole discretion, including, without limitation, sending unsolicited mass e-mailings to more than twenty-five (25) e-mail users, if such unsolicited e-mailings provoke complaints from the recipients or posting a single article or advertisement to more than ten (10) Usenet or other news groups or forums;
- posting to any Usenet or other news group, forum, e-mail mailing list or other similar group or list articles which are off-topic according to the Charter or other published FAQ, or description of the group or list;
- use the Services in any manner so as to harass, threaten, abuse, embarrass, or cause distress, unwanted attention, or discomfort to any person or entity;
- use the Services to post or transmit any chain letter, or letters or messages that offer a product or service based on the structure of a chain letter;
- engaging in any of the foregoing activities using the service of another access provider, but channeling such activities through a Company account or re-mailer, or using a Company account as a mail drop for responses; and use the Services in violation of the law, or in aid of any unlawful act, or to interfere with the use and operation of our network.

We consider the above practices to constitute abuse of both our Internet Service and of the recipients of such unsolicited mailings or postings who often bear the expense. Engaging in one or more of these practices will result in immediate termination of your account. We reserve the right to implement

technical mechanisms that block multiple postings before they are forwarded, as described above. Nothing contained in this policy shall be construed to limit our actions or remedies in any way with respect to any of the foregoing activities. We reserve the right to take any and all additional actions we may deem appropriate with respect to such activities, including, without limitation, all rights and remedies available to us at law or in equity. We reserve the right, at our sole discretion, to deny access at any time to users who breach the above rules or cause other abuses which we, in our sole discretion, deem to be disruptive to our subscribers.

### **Privacy and Security**

We cannot ensure or guarantee privacy for users of our Hosting Service and recommend that our Hosting Service not be used for the transmission of confidential information, including credit card information. Any such use shall be at your sole risk, and we shall have no liability in connection therewith.

### **Commerce over the Internet**

When making purchases or other transactions using our Hosting Service, you may be required by the merchant, information provider or service provider to supply personal information including credit card information or other means of payment. We are in no way responsible for any charges you may incur when making purchases or other transactions in this manner.

### **Monitoring**

We have no obligation to monitor our Hosting Service. Your participation in on-line communications occurs in real-time and is not edited, censored, or otherwise controlled by us. Further, we cannot and do not screen content provided by users of the public Internet.

Despite the foregoing, you agree that we have the right to monitor our Hosting Service electronically from time to time, to disclose any information as necessary to satisfy any law, regulation, or other governmental request, to operate our Services properly, or to protect ourselves or our subscribers. We will not intentionally monitor (except for the purposes of testing or security protection) or disclose any private electronic email message unless required by law. We reserve the right to refuse to post or to remove any information or materials in whole or in part, to refuse access to web sites that, in our sole discretion, are unacceptable, undesirable, or otherwise in violation of these Terms and Conditions and/or applicable law.

### **Invoices and Payment Terms**

We may send any invoices to you by mail, e-mail or fax, and you agree to accept these as our duly issued invoices. We require the hosting charges to be paid in full, and in advance.

### **Cancellation of Account (cancellation policy)**

Accounts may be cancelled at any time upon written notice delivered and received by us, not less than five (5) days written notice prior to the next billing date.

Upon termination of the Services, and receipt of all funds due, we will expunge our computer systems (and all back-up systems) of all such information, including the release of all of your email addresses and domain names.

We will provide on request a copy of all information of yours then on our computer systems. A fee will be charged for this service at the "Administration" rate outlined in your service contract.

### **Refunds**

No refunds will be given for partial terms or for any initial registration fee. If service is cancelled before service commences, a refund of any funds collected minus any administration or setup costs for work performed will be issued to the client.

### **Web Pages**

You are not permitted to distribute material promoting hatred against individuals or groups or any content which is deemed illegal under the laws of Canada. You are also not permitted to distribute material promoting any form of network abuse, such as bulk Spam mailers, sniffers, or hacking tools.

### **Email Attachments and Storage**

Email attachments are limited to ten (10) megabytes per message. Your total email storage capacity using any of our Internet Service is limited to fifteen (15) megabytes, unless otherwise stated in your Services Contract.

### **Limitation of Liability**

Neither we nor our suppliers warrant that the Internet Service will be uninterrupted or error free or that any information, software, or other material accessible on the Internet is free of viruses, worms, Trojan horses or other harmful components. You assume all responsibility and liability with respect to mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or any failure of performance.

### **NexiaWeb Internet Solutions Right to Discontinue Service**

We reserve the right to cancel the provision of our Hosting Service to you at any time without notice and at our sole discretion according to the terms and conditions of this document. Without limitation, if you modify, alter, reverse engineer, decompile, disassemble or create derived works based on our proprietary network protocols or software provided by us, your action(s) will constitute Service abuse and we will have the right to immediately terminate the account without limiting any other recourse we may wish to pursue against you in respect of such infringements and illegal activity. All user names associated with the Hosting Service shall remain our property and we may, at any time at our sole discretion, require you to change your user name.

### **Customer Acceptance of Terms and Conditions**

You automatically accept all of the Terms and Conditions as stated herein by using any or all of the services for which you signed up. You further agree to abide by all rules, regulations, and Terms of Service which may be changed from time to time at our discretion in accordance with these Terms and Conditions by notice published on our web site, sent by email or by fax to you.