

## TIMBERLINE WEBWORKS INTERNET SERVICES AGREEMENT

THIS INTERNET WEB SERVICES AGREEMENT ("Agreement"), is made by and between **Customer Name** ("**Customer**") and **TIMBERLINE WEBWORKS, INC.**, a Colorado Corporation, Colorado Springs, Colorado ("**TIMBERLINE**").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**Section 1. Provision of Services/Payment.** TIMBERLINE agrees to use its best efforts to provide the web site design and development services more specifically described in the "Website Design" section of this website at the rates and terms set forth on the "Pricing" page of this website. Thereafter, payment shall be made by immediately by Customer on the date of invoice by check or other payment methods that TIMBERLINE may accept. Any sales or other taxes imposed by any governmental authority upon services provided hereunder shall be the responsibility of Customer. TIMBERLINE shall be entitled to collect a rebilling charge of 18% per annum on any balances outstanding more than 30 days.

**Section 2. Cost Advancements/Reimbursement.** Should TIMBERLINE advance any costs on behalf of Customer in connection with the providing of services herein (including but not limited to the purchase of any media or advertising for Customer), Customer agrees to reimburse TIMBERLINE the same within 15 days from date of invoice by check. Any sales or other taxes imposed by any governmental authority upon any purchase advanced on behalf of Customer hereunder shall be the responsibility of Customer. TIMBERLINE shall be entitled to collect a rebilling charge of 18% per annum on any balances outstanding more than 30 days.

**Section 3. Term and Termination.** With regard to hosting services provided hereunder, the term of this Agreement shall commence upon the date of mutual execution hereof, and shall continue for a period of one (1) month thereafter. Unless terminated by written notice of either party at least 30 days prior to any anniversary date, the term of this Agreement shall automatically renew on a month to month basis thereafter. Notwithstanding the foregoing, in the event of any breach or default by either party hereunder, the other party may terminate this Agreement as provided below. If TIMBERLINE is unable to provide hosting services on a permanent basis, this contract will automatically terminate.

**Section 4. Ownership of Artwork.** TIMBERLINE and the Customer agree that all original artwork created on behalf of Customer will be owned by TIMBERLINE or its subcontractors until all payments for work under this contract have been received from Customer. At the time complete payment is received, ownership of all artwork will transfer to customer. TIMBERLINE and Customer agree that all artwork and photography provided by Customer will be owned by Customer. TIMBERLINE has no rights to Customer's artwork or photography unless Customer grants permission in writing to TIMBERLINE.

**Section 5. Ownership of Site Databases.** TIMBERLINE and the Customer agree that all data stored in website databases hosted or built by TIMBERLINE will be owned by Customer. TIMBERLINE will provide copies of the data to Customer upon written request. TIMBERLINE has no rights to Customer's databases unless Customer grants permission in writing to TIMBERLINE.

**Section 6. Ownership of Site Display Code.** TIMBERLINE and the Customer agree that all display code (HTML, CSS and display javascripts) used to create the website page displays will be owned by Customer. TIMBERLINE will provide copies of the display code to Customer upon written request.

**Section 7. Ownership of Site Content.** TIMBERLINE and the Customer agree that all content (copy and images) provided by the client will be owned by Customer. TIMBERLINE has no rights to Customer's content unless Customer grants permission in writing to TIMBERLINE.

**Section 8. Intellectual Property.** Neither party shall have the right to use the other's name, trademark or trade name without the prior written consent of the other party. No information exchanged between the parties shall be considered proprietary, trade secret or confidential unless it is the subject of a separate, written non-disclosure agreement. The Internet is not a secure environment and sensitive, trade secret and other confidential information should not be transmitted over the Internet.

**Section 9. Browser Compatibility.** Any work that TIMBERLINE creates that is designed to be viewed in a web browser will be built for compatibility with the currently released versions of the major internet web browsers at the time TIMBERLINE designed the web page. This includes Microsoft Internet Explorer, Mozilla Firefox and Apple Safari. TIMBERLINE can not guarantee compatibility with older browser versions or browser versions that have not yet been released. TIMBERLINE reserves the right to charge Customer to enable browser compatibility for older browsers or future browsers that cause the work that TIMBERLINE created not to function properly.

**Section 10. No Warranty; Limitation of Liability.** TIMBERLINE CANNOT WARRANT THAT WEB HOSTING OR EMAIL OR OTHER INTERNET SERVICES WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR FREE, OR MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICES PROVIDED. THE SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND. ACCORDINGLY, TIMBERLINE HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND SHALL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, CONSEQUENTIAL, OR ANY OTHER FORM OF MONEY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF DATA OR INFORMATION OF ANY KIND, HOWEVER CAUSED, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY TIMBERLINE OR THE PROVISION OF SERVICES HEREUNDER, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF TIMBERLINE, STRICT LIABILITY IN TORT OR OTHERWISE, AND WHETHER OR NOT TIMBERLINE HAS BEEN MADE AWARE OF THE POSSIBILITIES OF SUCH DAMAGES. IN THE EVENT OF A SERVICE OUTAGE TIMBERLINE WILL ONLY BE LIABLE FOR THE AMOUNT PAID FOR SERVICE PRORATED FOR THE AMOUNT OF TIME OF THE OUTAGE. CUSTOMER SHALL INDEMNIFY AND HOLD TIMBERLINE, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEYS' FEES, ARISING OUT OF OR RELATED TO ANY VIOLATION OF LAW, RULE OR REGULATION OR CUSTOMER'S IMPROPER USE OF ANY WEB PAGE OR THE INTERNET OR ANY OTHER BREACH OF THIS AGREEMENT BY CUSTOMER.

**Section 11. Default.** In the event any party shall fail to perform under the terms and conditions of this Agreement, the non-breaching party may, upon 10 days prior written notice to the other party, treat this Agreement as terminated, or may treat this Agreement as being in full force and effect with the right of action for specific performance, damages or such other relief as may be available; provided however, the breaching party shall have the right to cure any default during such notice period (or, in the event any default is not susceptible of being immediately cured, commence diligent efforts to cure such default within such notice period and diligently proceed with its cure

efforts to a full cure status within 30 days); provided further, however, TIMBERLINE shall have the right to immediately terminate this Agreement or suspend service without any prior notice whatever in the event Customer violates any of the provisions of this Agreement relating to content or use of web pages.

**Section 12. Costs of Enforcement.** In any action to enforce this Agreement, collect damages or pursue other relief as a result of a breach hereof, whether through mediation, arbitration or in a court of law or equity, or otherwise, the prevailing party shall be entitled to collect all of its costs and expenses (whether legal or otherwise), including attorney's fees, the costs of investigation, settlement, expert witnesses, additional costs incurred in enforcing this Agreement or enforcing and collecting any judgment rendered hereon and interest at the highest rate permitted by law.

**Section 13. Acceptable Use Policy.** Customer agrees to be bound to the terms and conditions of TIMBERLINE's Acceptable Use Policy as follows:

In order to maintain an informative and valuable service that meets the needs of the visitors of our hosted websites and TIMBERLINE Services, the following rules have been established to protect against abuse.

Use of your site or TIMBERLINE Services for any purpose that is unlawful or in any manner which could damage, disable, overburden or impair the operation of this site, or TIMBERLINE Services or any other party's use or enjoyment of TIMBERLINE Services, is strictly prohibited.

#### **Section 14 General Provisions.**

**A. Notices.** Any notice, demand or other communication required or permitted to be given hereunder shall be in writing and shall be hand delivered or delivered by facsimile transmission or certified or registered mail (and if by mail, return receipt requested, postage prepaid) addressed or transmitted to the party to be notified at such party's address or number as shown above or at such party's last known address or number. Any notice delivered hereunder shall be deemed effective upon delivery, if hand delivered, and upon receipt, as evidenced by the date of transmission indicated on the transmitted material if by facsimile transmission, or the date of delivery indicated on the return receipt, if mailed as aforesaid. The addresses of the parties may be changed by written notice to the other party as provided herein.

**B. Entire Agreement.** This Agreement, and any related documents referenced herein, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior or contemporaneous understandings, negotiations or discussions, whether oral or written, of the parties hereto.

**C. Binding Effect.** Except as specifically provided otherwise herein, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors and assigns, including without limitation, heirs, distributees, personal or legal representatives, administrators, executors and any other person, partnership, company, corporation or entity which may acquire substantially all of either party's assets or business, or with or into which either party may be liquidated, consolidated, merged or otherwise combined. This Agreement shall become binding upon the parties hereto only upon its execution by all parties and the failure of any one or more parties hereto to execute this Agreement shall render this Agreement invalid as to all parties unless otherwise agreed.

**D. Assignment and Delegation.** Customer shall not assign nor delegate any of his/her/its duties or obligations under this Agreement.

**E. Governing Law.** This Agreement has been negotiated, executed and delivered within the State of Colorado, and shall be construed, interpreted and applied in accordance with the laws of the State of Colorado, including the conflict of laws provisions of the State of Colorado. The courts and authorities of El Paso County, State of Colorado shall have jurisdiction over all controversies which may arise with respect to the negotiation, execution, interpretation and compliance with the Agreement, and the parties hereby waive any other venue to which they may be entitled by virtue of domicile or otherwise. Further, should any party initiate or bring a suit or action in any state other than the State of Colorado, that party shall be deemed, by virtue of execution of this Agreement, to have admitted and agreed that upon application by any other party hereto, said suit shall be dismissed without prejudice and filed in a court in El Paso County, State of Colorado.

**F. Amendment.** No amendment or modification of this Agreement shall be deemed effective unless or until executed in writing by all the parties hereto with the same formality attending execution of this Agreement.

**G. Severability.** If any provision of this Agreement, or the application of such provision to any person or circumstance, is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such fact shall not affect the remaining provisions hereof or the application of such provisions to persons or circumstances other than those to which it is held invalid, and in lieu of each such provision there shall be substituted a new provision as similar as possible to the provision declared invalid, illegal or unenforceable.

**H. Waiver.** No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

**I. Time of Essence.** Time is of the essence to this Agreement.

**J. Force Majeure.** Neither party shall be liable for any failure to perform hereunder where such failure is due to circumstances beyond its reasonable control including, without limitation, circumstances created by any act of God, accident, sickness, epidemic, acts of civil, military or governmental authorities, war, sabotage, strike, lockout or other labor disturbance or dispute, riot, flood, fire, earthquake, unavailability or shortages of parts, supplies, materials, fuel, energy, labor, materials or manufacturing or transportation facilities.