



## Web Hosting Service Agreement

READ THESE TERMS CAREFULLY BEFORE REGISTERING FOR A WEB HOSTING ACCOUNT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT ACCESS OR OTHERWISE USE THESE SERVICES. YOUR CLICKING ON THE BUTTON MARKED "I ACCEPT" AND YOUR CONTINUED USE OF THE SERVICES INDICATES YOUR ACKNOWLEDGMENT THAT YOU HAVE READ AND ACCEPTED THESE TERMS AND CONDITIONS AND AGREE TO BE BOUND AS SET FORTH HEREIN. WE RECOMMEND PRINTING A COPY OF THIS AGREEMENT FOR YOUR FILES.

This Agreement ("Agreement") is between you ("Client") and MetroCast, a United States and New Hampshire company, ("MetroCastWebHosting.com") as of the date you order a web hosting account ("account") from MetroCastWebHosting.com.

MetroCastWebHosting.com is in the business of offering, among other things, website hosting services pursuant to web hosting accounts.

MetroCastWebHosting.com may amend this Agreement at any time by posting the amended Agreement on its web site and the effective date of any such amendment will be the date on which the amended Agreement is so posted. Client agrees that it has read and understands this Agreement and acknowledges a duty to periodically check these terms and conditions. Without limiting the generality or effect of the foregoing, MetroCastWebHosting.com may also add, delete or modify some or all of its Services at any time and in its sole discretion.

By accepting this Agreement, Client (i) represents and warrants that he or she is at least 18 years of age and is the authorized representative of the organization or entity that he or she purports to represent, and (ii) agrees to provide true, accurate, current and complete information about Client as prompted in the account registration process.

### 1.0 Services

#### 1.1 Web Hosting account (virtual server)

Pursuant to the terms of this Agreement and the Plan selected by Client, MetroCastWebHosting.com agrees to provide Client with: (i) space on a server ("Virtual Server") to host a site on the Internet ("Web Site"), (ii) a license to use MetroCastWebHosting.com proprietary software ("Software"), and (iii) various other services as more specifically set forth in Client's Plan (collectively, "Services"). Client hereby agrees that MetroCastWebHosting.com is responsible only for providing the Services set forth in Client's Plan and this Agreement, and MetroCastWebHosting.com is not responsible for providing any other services or tasks

#### 1.2 Availability of website

The Web Site shall be generally accessible to third parties via the Internet twenty-four hours a day, seven days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Services due to causes beyond the control of MetroCastWebHosting.com or which are not reasonably foreseeable by MetroCastWebHosting.com, including but not limited to interruption or failure of

telecommunication or digital transmission links and Internet slow-downs or failures. PLEASE SEE SECTION 3.1 FOR 90% UPTIME GUARANTEE.

### 1.3 Updates

As part of the Services, MetroCastWebHosting.com shall provide Client with a system and the necessary Software for Client to transmit to MetroCastWebHosting.com any revisions, updates, deletions, enhancements or modifications ("Updates") to the Virtual Server. MetroCastWebHosting.com shall update the Virtual Server provided that (i) Client is not in default of its payment obligations hereunder, (ii) such Updates are within the scope of this Agreement; and (iii) such Updates are server ready.

### 1.4 Domain Registration

MetroCastWebHosting.com provides Domain Registration services through our third party registrar Enom. Enom's Registration agreement can be found [here](#). MetroCast is not responsible for the renewal/s of domain/s. It is the responsibility of the owner of the domain/s to renew it/them.

## 2.0 Term and renewal

This Agreement will begin upon the date Client registers the Plan and shall continue for the period of time set forth in the Plan ("Initial Term"), unless earlier terminated according to the provisions of Section 7 below. This Agreement will continue automatically for additional terms equal to the Initial Term (each, a "Renewal Term") unless either party provides notice at least seven (7) days prior to the end of the Renewal Term, as applicable, that it has elected not to renew the Agreement. For security reasons and the general protection of all clients, MetroCastWebHosting.com requires all notices not to renew the Agreement be delivered by either: (i) submitting an e-mail at [cancelations@MetroCastWebHosting.com](mailto:cancelations@MetroCastWebHosting.com) or (ii) mailing a cancellation request to 21 Jarvis Ave. Rochester, NH 03868, containing the account name, user ID, password, reason for cancellation, first and last name and signature of Client.

## 3.0 LIMITED WARRANTIES

### 3.1 90% uptime guarantee

Subject to the limitations contained herein, MetroCastWebHosting.com hereby warrants that the following services will have an average monthly uptime of no less than 90% as determined exclusively by MetroCast: http, ftp, SSH,SMTP and POP3 ("90% Uptime Guarantee"). The month begins on the first day of each month and continues until the last day of that month. In the event of any loss or interruption of Services resulting in less than 90% uptime and which is due to (i) causes other than scheduled maintenance and required repairs, (ii) causes beyond the control of MetroCastWebHosting.com, or (iii) causes which are not reasonably foreseeable by MetroCastWebHosting.com, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures, Client shall receive, and MetroCastWebHosting.com's sole and exclusive liability for any loss or interruption of Services shall be, a credit equal to a proration of the actual downtime based upon the Client's present Plan fees. The percentage as provided by MetroCast and shall be the sole and final determination of the 90% Uptime Guarantee.

### 3.2 Price freeze guarantee

Provided Client is at no time in breach of this Agreement, and Client does not change Client's current virtual server plan, MetroCastWebHosting.com hereby agrees to not raise the fees set forth in Client's Plan ("Price Freeze Guarantee").

## 4.0 Fees and payments

#### 4.1 Fees

Client shall pay all fees according to the prices and terms listed in this Agreement and Client's Plan. The prices listed in Client's Plan at the date of this Agreement shall remain in effect during the Initial Term. Except as provided in the Prize Freeze Guarantee, MetroCastWebHosting.com may change the fees it charges Client for Plans upon thirty (30) days prior notice to any Renewal Term.

#### 4.2 Payments and late payment charge

Payment for all Set-Up Fees (as set forth in the Plan) shall be due immediately upon Client's registration of the Plan. Fees for Services shall be in the amount and frequency set forth in the Plan selected by Client ("Payment Date"). This Agreement is for the entire Initial Term or applicable Renewal Term and Client is hereby obligated to pay the fees for the entire amount of the Plan voluntarily selected by Client. All such fees shall be received at MetroCastWebHosting.com by 5:00 p.m. on the Payment Date. Client shall pay a late charge of 2% per month, or the maximum rate permitted by applicable law, whichever is less, on any unpaid amount for each calendar month or fraction thereof that payments are in arrears to MetroCastWebHosting.com. All fees that have not been timely paid may be sent by MetroCastWebHosting.com to a collection agency. Client agrees to be responsible for paying all costs of collection, including, but not limited to, reasonable attorney's fees and, where lawful, collection agency fees. All accounting issues should be addressed via a support ticket or by e-mail at [support@MetroCastWebHosting.com](mailto:support@MetroCastWebHosting.com)

#### 4.3 Credit Cards/Debit Cards

MetroCastWebHosting.com accepts credit card payments via the payment service [Authorize.Net](#). Payments will be set up on a recurring basis via Authorize.Net's subscription method. In the event of a charge back, MetroCastWebHosting.com will immediately suspend all services to client until such time as full payment is received in addition to a \$25.00 charge back fee and a \$50.00 account enable fee.

#### 4.4 Pricing disputes

Client must notify MetroCastWebHosting.com in writing of any disputed charges within 30 days of the date of the billing for such charges. If Client does not notify MetroCastWebHosting.com within that time period, Client has waived any right to dispute such amounts, either directly or indirectly or as a set-off, recoupment or defense in any action or efforts to collect amounts due to MetroCastWebHosting.com.

#### 4.5 Suspension of services

Failure of Client to fully pay any fees when due may be deemed a material breach of this Agreement justifying suspension of the performance of Services to Client at MetroCastWebHosting.com's sole option. Any such suspension of Services does not relieve Client from the obligation to pay all amounts due MetroCastWebHosting.com under this Agreement for the remainder of the Initial Term or the then applicable Renewal Term. In the event of a suspension of Services and upon a reactivation request by Client, Client shall pay MetroCastWebHosting.com a \$50.00 reactivation fee in addition to full payment of the outstanding balance due. Reactivation of services will only be performed during MetroCastWebHosting.com's regular business hours (Monday through Friday, 9:00 a.m. – 5:00 p.m. EST Time, excluding holidays).

#### 4.6 Taxes

Fees are exclusive of any and all sales, use, value added, excise, transfer, privilege, duty and any other taxes or duties, whether international, national, state or local, however

designated or assessed with respect to the Services provided under this Agreement; excluding, income taxes on profits which may be levied against MetroCastWebHosting.com.

## 5.0 Client obligations

### 5.1 Client content

Client shall provide all materials comprising the Web Site, including, but not limited to, any and all images, photographs, illustrations, graphics, audio clips, video clips or text (the "Client Content"), which shall be in a correct format (as specified by MetroCastWebHosting.com), including, but not limited to, HTML format ("Server Ready"). Client is solely responsible for the content of any postings, data or transmissions using the Services, or any other use of the Services by Client or by any person or entity Client permits to access the Services. MetroCastWebHosting.com reserves the right, in its sole discretion, to exclude or remove from the Web Site any Client Content for any of the following reasons: (i) Client Content is not Server Ready, (ii) CGI scripts or programs consume an unreasonable amount of Central Processing Unit ("CPU") usage, Random Access Memory ("RAM"), or other system resources, (iii) MetroCastWebHosting.com has received a significant number of complaints regarding Client's failure to be reasonably accessible to its customers or timely fill orders, (iv) Client has become the subject of a government complaint or investigation, (v) Client runs or executes JAVA Servlets on the Virtual Server, or (vi) any other reason which may violate or infringe any law or third party rights or which otherwise may potentially expose MetroCastWebHosting.com to civil or criminal liability or public ridicule, provided that such right shall not place an obligation on MetroCastWebHosting.com to monitor or exert editorial control over the Web Site. PLEASE SEE SECTION 7.2 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.

### 5.2 Representations and warranties

Client represents and warrants that: (i) Client has the power and authority to perform its obligations hereunder and the Agreement constitutes a valid and binding obligation enforceable against Client in accordance with its terms, (ii) Client has the requisite level of knowledge in the use of Internet languages, protocols and software to utilize the Services provided by MetroCastWebHosting.com, (iii) Client has secured all required authorization(s) necessary for hypertext links to third party web sites, (iv) Client holds all necessary licenses from the required jurisdictions to engage in the advertising and sale of any goods and services which may be offered on the Web Site, (v) Client Content does not and will not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of a third party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, and (vi) Client owns the Client Content or otherwise has the right to place the Client Content on the Web Site. PLEASE SEE SECTION 7.2 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.

### 5.3 Acceptable use of virtual server

Client agrees to comply with all laws, rules, regulations and MetroCastWebHosting.com's Acceptable Use Policy ("AUP") found at <http://www.MetroCastWebHosting.com/policies/acceptableuse.html>. The AUP is incorporated herein by this reference and may be updated from time to time by MetroCastWebHosting.com in its sole discretion. Client acknowledges that it has read and understands the AUP and that Client has an obligation to periodically review the AUP from time to time. In addition to those activities prohibited in the AUP, Client agrees not to utilize

the Services for any activities that: (i) constitute or encourage a violation of any applicable law or regulation, including but not limited to the sale of illegal goods or the violation of export control or obscenity laws, (ii) defame, impersonate or invade the privacy of any third party or entity, (iii) infringe the rights of any third party, including but not limited to the intellectual property, business, contractual or fiduciary rights of others, (iv) involve the display, sale, distribution or creation of any pornographic, obscene or otherwise offensive goods, services, material or ideas or promote violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age, (v) modify any MetroCastWebHosting.com copyright notices or scripts without obtaining MetroCastWebHosting.com's prior written consent, (vi) provide mirroring service for other web sites, (vii) the primary purpose is non-http compatible file distribution, including but not limited to the distribution of the following file types: .arj, .mp3, .m4p, .exe, .tar, .rar, or .zip, (viii) are in any way connected with trolling, mailbombing, IRC Bots, Game-emulators, ROMs or the transmission of "junk mail," "spam," the unsolicited mass distribution of e mail or with any unethical marketing practices, (ix) maintain or provide an image archive or collection for display, (x) use an email box exclusively as a storage space for data, which includes a mailbox exceeding 30 MB, and (xi) the primary website theme is related to professional wrestling, fads, "Top" sites, or otherwise "trendy" websites. In the event any provisions contained in this Agreement conflicts with any terms, conditions or clauses contained in the AUP, the provisions of this Agreement shall govern. PLEASE SEE SECTION 7.2 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.

#### 5.4 Mailing Lists

MetroCastWebHosting.com permits Client to send mailings to subscribers of Client's own mailing list. Such mailings must have explicit instructions to the recipient on how to remove his/her name from the list, and all requests to do so must be honored immediately. Client agrees not to send mailings to lists provided by an outside agency or individual. Client further agrees not to provide mailing list services to others. Due to the nature of the Virtual Server, MetroCastWebHosting.com requests that all mailing lists be sent during the hours of 1:00 a.m. and 5:00 a.m., EST. MetroCastWebHosting.com reserves the right to terminate Client's mailing program, whether provided by MetroCastWebHosting.com or not, immediately and without notification to Client if said list causes a problem, in MetroCastWebHosting.com's sole discretion, with the e mail services of other clients. MetroCastWebHosting.com also reserves the right to forbid Client from utilizing any mail-sending program that jeopardizes the mail services of other clients. Due to the consumption of system resources and overloading of the e-mail server, MetroCastWebHosting.com forbids the use of Gossamer Links program by any of its clients. PLEASE SEE SECTION 7.2 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.

#### 6.0 Licence and proprietary rights

##### 6.1 Software license

During the Initial Term and any applicable Renewal Term, MetroCastWebHosting.com grants Client a nontransferable, nonexclusive limited license to use the Software, in object code form only, solely for purposes of using the Services on the Virtual Server. To the extent such Software belongs to a third party, MetroCastWebHosting.com only grants such rights as it is able to under an agreement with the applicable third party. CLIENT MAY NOT USE WEB PAGES OR PARTS OF WEB PAGES GENERATED BY MEANS OF THE SOFTWARE ON ANY

SERVER OTHER THAN THE VIRTUAL SERVER.

## 6.2 Software license restrictions

Client agrees that it will not, directly or indirectly (and it will not allow others to):

- Copy the Software, except as is necessary to install on Hardware and for internal, archival purposes. In the event Client makes any copies of the Software, Client shall reproduce all proprietary notices on such copies;
- Reverse engineer, decompile, disassemble, modify or otherwise attempt to derive source code from the Software;
- Sell, lease, license, transfer, give possession of, or sublicense the Software or the documentation to others;
- Write or develop any derivative or other software programs, based, in whole or in part, upon the Software.

## 6.3 Proprietary rights

Client shall not have any right, title, or interest in the Virtual Server, Software, Hardware, documentation, or any copyrights, patents, trademarks, trade secrets and any other proprietary rights embodied or used in connection therewith, except for the limited license provided in Section 6.1.

## 6.4 Proprietary Rights of Client

As between Client and MetroCastWebHosting.com, Client Content shall remain the sole and exclusive property of Client, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights. Client hereby grants to MetroCastWebHosting.com a non-exclusive, worldwide, royalty-free license for the Initial Term and any Renewal Term to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Client Content as necessary to render the Services to Client under this Agreement.

## 7.0 Termination of agreement

### 7.1 Termination upon Breach or Insolvency

Subject to Section 7.3 below, this Agreement may be terminated by either party upon written notice, (i) if the other party breaches any obligation hereunder and the breaching party fails to cure such breach within thirty (30) days after such notice, or (ii) if the other party is the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, makes an assignment for the benefit of creditors or admits in writing its inability to pay debts when due. Notwithstanding the foregoing, this Agreement may be terminated by MetroCastWebHosting.com at any time upon written notice to Client if Client fails to make any payment within five (5) days after such payment was due.

### 7.2 Termination for Client's Breach of Sections 5.1, 5.2, 5.3, 5.4.

Notwithstanding Section 7.1 above, MetroCastWebHosting.com may immediately terminate this Agreement and remove Client's Web Site from the Virtual Server if it is determined, in MetroCastWebHosting.com's sole discretion, that Client has breached Sections 5.1, 5.2, 5.3, or 5.4 of the Agreement. Any termination under this Section 7.2 shall take effect immediately and Client expressly agrees that it: (i) shall not have any opportunity to cure, (ii) shall not be entitled to a refund of any fees paid to MetroCastWebHosting.com, and (iii) shall promptly pay a \$250.00 clean-up / disconnection fee.

### 7.3 Rights and Remedies upon Termination

In the event either party terminates the Agreement pursuant to Sections 7.1 or 7.2, MetroCastWebHosting.com shall be entitled to immediately receive payment for all Services incurred through the date of termination. In addition, it is agreed to that, if Client is the breaching party, then MetroCastWebHosting.com will suffer damages that would be difficult to ascertain. Therefore, Client agrees to pay MetroCastWebHosting.com all amounts due hereunder for the remainder of the Initial Term or then applicable Renewal Term as liquidated damages and not as a penalty. Such liquidated damages shall be in addition to all other rights and remedies available to MetroCastWebHosting.com in law and in equity which may be granted by a court of competent jurisdiction.

## 8.0 Warranty disclaimer; Limitation on liability & indemnity

### 8.1 Warranty disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3 OF THIS AGREEMENT, ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. MetroCastWebHosting.com DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. MetroCastWebHosting.com DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.

### 8.2 Limitation on liability

IN NO EVENT SHALL MetroCastWebHosting.com BE LIABLE TO CLIENT, CLIENT'S USERS OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR NONCONTRACTUAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SERVICES, EVEN IF MetroCastWebHosting.com HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. MetroCastWebHosting.com'S LIABILITY, IF ANY, TO CLIENT OR TO ANY THIRD PARTY HEREUNDER SHALL IN NO EVENT EXCEED THE TOTAL AFTER TAX PROFITS EARNED BY MetroCastWebHosting.com UNDER THIS AGREEMENT IN THE LAST TWELVE MONTHS. THE PARTIES ACKNOWLEDGE THAT MetroCastWebHosting.com HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

IN NO EVENT SHALL MetroCastWebHosting.com BE LIABLE FOR FAILURE OR DELAY IN PERFORMING ITS OBLIGATIONS HEREUNDER IF SUCH FAILURE OR DELAY IS DUE TO CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF ANY GOVERNMENTAL BODY, WAR, INSURRECTION, SABOTAGE, EMBARGO, FIRE, FLOOD, STRIKE OR OTHER LABOR DISTURBANCE, INTERRUPTION OF OR DELAY IN TRANSPORTATION, UNAVAILABILITY OF OR DELAY IN TELECOMMUNICATIONS OR THIRD PARTY SERVICES, FAILURE OF THIRD PARTY SOFTWARE OR INABILITY TO OBTAIN RAW MATERIALS, SUPPLIES, OR POWER USED IN OR EQUIPMENT NEEDED FOR PROVISION OF THE SERVICES.

### 8.2 Indemnity

Client will indemnify, defend and hold MetroCastWebHosting.com, and its officers,

directors, employees, agents and affiliates (each, an "Indemnified Party") harmless from and against any and all costs, liabilities, losses and expenses, including, but not limited to, reasonable attorneys' fees (collectively, "Losses") resulting from or arising out of any claim, suit, action, arbitration or proceeding (each, an "Action") brought by a third party against Indemnified Party relating to: (i) a breach or alleged breach by Client of any of its representations, warranties, covenants or obligations hereunder, (ii) infringement or misappropriation of any intellectual property rights, including but not limited to rights of privacy, patent, copyright, trade secret, trademark rights and/or licenses, (iii) injury caused by any negligence or willful misconduct of Client, or (iv) use of the Services, including use of the Services without the consent of Client

## 9.0 General provisions

### 9.1 Privacy policy

In an effort to address Client's privacy concerns, MetroCastWebHosting.com has instituted a privacy policy ("Privacy Policy") which may be found at <http://www.MetroCastWebHosting.com/privacy.html> and is incorporated herein by this reference. MetroCastWebHosting.com reserves the right to change the Privacy Policy at any time. Client acknowledges that it has read and understands the Privacy Policy and that Client has an obligation to periodically review the Privacy Policy from time to time. In the event any provisions contained in this Agreement conflicts with any terms, conditions or clauses contained in the Privacy Policy, the provisions of this Agreement shall govern.

### 9.2 Independent contractor

MetroCastWebHosting.com and Client are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between MetroCastWebHosting.com and Client. Neither MetroCastWebHosting.com nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

### 9.3 Binding nature of agreement

Except as otherwise provided herein, all the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that Client may not assign or transfer its rights or obligations under or interest in this Agreement without first obtaining the prior written consent of MetroCastWebHosting.com. MetroCastWebHosting.com may, in its sole discretion, assign its obligations under this Agreement in connection with any merger, sale of all or substantially all of the assets of MetroCastWebHosting.com, or sale of a majority of the outstanding shares of stock of MetroCastWebHosting.com.

### 9.4 No lease

This Agreement is a service agreement and is not intended to and will not constitute a lease for any real or personal property. Client acknowledges and agrees that (i) it has been granted only a license to use the Services and equipment provided by MetroCastWebHosting.com in accordance with this Agreement, (ii) Client has not been granted any real property interest in any equipment, and (iii) Client has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.

### 9.5 No Third-Party Beneficiaries.

The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.

9.6 Attorney's fees

In the event of any litigation or arbitration between the parties hereto arising from or related to a party's nonperformance or breach of this Agreement, the prevailing party in any such action shall be entitled to reimbursement of all costs and expenses incurred in connection with such litigation or arbitration, including without limitation, reasonable attorney's fees.

9.7 Alteration

No alteration, modification, or change of this Agreement shall be valid unless made in writing and executed by the parties hereto.

9.8 Governing law; venue

This Agreement shall be governed by and shall be construed, interpreted and enforced in accordance with the laws of the State of New Hampshire, without reference to principles of conflicts of law. The parties agree that the sole and exclusive venue for any and all disputes arising hereunder shall be in any trial court located in Carroll County, New Hampshire. The parties hereby irrevocably consent to the jurisdiction of the appropriate court in Carroll County, New Hampshire.

9.9 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. The parties agree that this Agreement, the Service Order and Service Order Change Forms may be delivered by any party by electronic or facsimile signature.

9.10 Severability

Each provision of this Agreement shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein.

9.11 Entire agreement

This Agreement, along with the AUP, Privacy Policy and Client's Plan, shall be the entire agreement among the parties with respect to the transactions contemplated among them and, except as otherwise provided, supersede all previous negotiations, commitments, and writings.