**CHECKLIST**

**WEBSITE HOSTING AGREEMENT**

This checklist does not provide an exhaustive list of what is required in a website hosting agreement. In some cases, more or less may be required. This checklist is simply a guide to what provisions are normally important. This document is not intended to replace legal advice and legal wording is not used

* **Title of contract**
* **The identity of the parties**
* Individuals or business entities
* If businesses, what type? (partnership, company, LLC, etc.)
* Name of person signing on behalf of the business
* Signer’s official title
* Does he or she have the authority to bind the business?
* **Addresses of the parties**
* **The general purpose of the Web Hosting Agreement**
* **Preliminary matters or recitals**
* Who owns the copyrights? Make sure all parties with rights that are affected are made parties to the Agreement.
* Generally, describe the service to be provided such as locating the website on the host’s server and making it available to Internet users.
* Describe the general business of the pages to be hosted. What is the scope of that page?
* Describe the URL locations of the various pages.
* **Hosting Services**
* How much server space is being made available? This may tie into the pricing of monthly hosting fee. Attach a schedule of fees by allocated disc space.
* Is there a dedicated bandwidth requirement? How much bandwidth is available?
* Is there a requirement that the server be a certain type? (UNIX, etc.)
* Is there a warranty that the server software is kept up to date?
* If web design is also included in services under this agreement or a separate agreement, is copyright licence tied to continued hosting?
* Is there a warranty regarding minimum hosting speed? Is T1 required?
* Is there a limit on T1 and bandwidth sharing?
* Are there standards for the permitted downtime of the server? Are periodic maintenance and backup downtime provided for? Are there required response times if there is a server problem?
* What are the required hours of operation and customer support hours?
* Are mirror sites required/permitted? If so, what server can they be on? Separate server/location?
* What are backup responsibilities? How frequent? Where must backups be stored?
* Does the client have File Transfer Protocol (FTP) access, secured or otherwise? Is host liability limited? What policies and procedures apply if the client has FTP access? Must client notify the host of new material on the server?
* Can owner access the site to make changes? Is access secure, password protected, etc.?
* Are Email Accounts included? How many? Web-based?
* **Other Services of Hosting Company**
* Web Development
* Email Accounts
* Search Engine Placement
* Monitoring and Reporting
* Store Fronts
* E-Commerce Solutions
* Marketing
* Links and Advertising
* **Responsibilities of Client**
* Any there restrictions regarding content? Is any material illegal?
* Limit to specific site presented for hosting
* To assure that the material does not infringe
* Acknowledge host policies such as anti-spamming, bulk mail marketing, etc.
* Does host have the right to monitor site reserved?
* **Copyright and Digital Millennium Act compliance**
* The client should represent and warrant that the material to be hosted does not infringe on the proprietary rights of any other party.
* Is host held harmless?
* Does the client acknowledge Digital Millennium Act procedures? If claimed infringement, the contract should state that the host gets the right to shut the site down.
* Specifically, prohibit infringing material to be located on the site and make it grounds for termination of hosting agreement.
* **Term and termination**
* Is there a defined term to the Agreement?
* Can client transport their site upon termination? Who owns the copyright to the site? Issues if host also developed a website.
* Can an agreement be terminated before the end of the term without cause?
* Under what circumstances can an agreement be terminated with cause? Usually default
* Even before termination, can client transport site to another host?
* How does termination tie in with hosting fee?
* Is there an early termination fee or penalty?
* When does the term commence? Immediately? Upon delivery of Website? If also developing the site, upon substantial completion of the site? Or does hosting fee commence during development?
* **Compensation – Hosting fees**
* What are the fees for hosting and other services?
* Hosting fee limited to hosting services? Other services require a separate fee or included within hosting fee?
* What are the payment terms? Monthly in advance? Form of payment?
* Does payment vary depending upon disc space, dedicated bandwidth, etc.?
* How long does fee last? Can it be changed during the term? Does it escalate upon renewal?
* Can the page be shut down if hosting fee is not paid? Hold harmless from business losses to the client if the page is shut down for non-payment?
* **Warranties of Host**
* Are warranties limited to those specifically made under the agreement?
* Are other warranties disclaimed? Incidental and consequential damages disclaimer? Warranties of merchantability and fitness for a particular purpose?
* Limit possible damages to cost paid for hosting service.
* **Miscellaneous**
* Attorneys’ fees
* Modification of Agreement
* Time of the Essence
* Survival
* Necessary Acts and Further Assurances
* Execution
* Specific Performances
* Representation on Authority of Parties
* Unforeseen Events
* Company seal