

# Web Site Hosting Service Agreement

Updated November, 2019

The following agreement is between Qwik Media Inc. (“QWIK MEDIA”) of 1240 2<sup>nd</sup> Ave East, Owen Sound ON, Canada and You (“the Client”).

WHEREAS, QWIK MEDIA is a Technical Services Provider offering storage and transfer of data and other information over the Internet;

WHEREAS, the Client seeks to use these services for its own purposes;

WHEREAS, the parties acknowledge that the Internet is neither owned nor controlled by any one entity; therefore, QWIK MEDIA can make no guarantee that any given party shall be able to access the server made available by QWIK MEDIA at any given time. QWIK MEDIA represents that it shall make every good faith effort to ensure that the server is available as widely as possible and with as little service interruption as possible;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows;

## **I. Financial Arrangements:**

### **1. Length of service**

Client agrees to an initial hosting term as indicated on Schedule (A) of this agreement. The length of contract required is based on the type of service desired by the Client and shall be determined solely by QWIK MEDIA.

### **2. Service start date**

The first payment plus setup charges, if any, shall be due in advance of any service provided and are outlined on Schedule A of this agreement. Service shall begin upon QWIK MEDIA's receipt of payment for such first term of service or upon a mutually agreed upon other date.

### **3. Renewal by client**

This agreement will automatically renew for successive three (3) month Terms unless canceled in writing by Client at least 30 days prior to the end of Term renewal date. Renewal prices are subject to change. Renewal of services by Client indicates agreement to any Contract revisions and price changes. Renewal fees for the following term will be automatically invoiced to your account.

### **4. Failure to pay**

- a. In the case of a web site hosted on a QWIK MEDIA hosting server, failure of Client to remit payment to QWIK MEDIA by the invoice due date is cause for removal of the Client's web site files from the QWIK MEDIA hosting server. Client agrees that QWIK MEDIA shall not be held liable for such removal or disconnection.

- b. In the case of a customer's co-located server, failure of a Client to remit payment to QWIK MEDIA by the invoice due date is cause for the server to be disconnected from the QWIK MEDIA network and unplugged without further notification by QWIK MEDIA. Client agrees that QWIK MEDIA shall not be held liable for such removal or disconnection. Disconnected customer owned equipment shall be returned to the customer only upon full payment of outstanding invoices, less any credits due based on our Refund Policy, below. QWIK MEDIA shall not be held responsible for such equipment when held in such disconnected/unplugged fashion for over sixty days, after which the equipment will be assumed abandoned by the customer.

#### **5. Refund policy**

- a. As detailed above, cancellation by Client must be in writing with 30 days notice.
- b. Setup charges are not refundable under any circumstances.
- c. The first Term of service is not refundable under any circumstances.
- d. Refunds of renewal fees paid to QWIK MEDIA shall only be made for *fully unused* calendar months of service that the Client desires to cancel.
- e. Client shall not be entitled to *any* refund of *any* monies under *any* circumstances should this agreement be terminated due to a violation of the QWIK MEDIA Policies and Terms of Service Agreement.

## **II. Taxes:**

QWIK MEDIA shall not be liable for any taxes or other fees to be paid in accordance with or related to purchases made from Client or QWIK MEDIA's server. Client agrees to take full responsibility for all taxes and fees of any nature associated with such products sold.

## **III. Material and Products:**

QWIK MEDIA will exercise no control whatsoever over the content of the information passing through the network except for what is noted in section IX of this agreement, relating to Lawful Purpose, and with respect to the QWIK MEDIA Policies and Terms Of Service Agreement.

QWIK MEDIA makes no warranties or representations of any kind, whether expressed or implied for the service it is providing. QWIK MEDIA also disclaims any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by the Client, including loss of data resulting from delays, non-deliveries or service interruptions by any cause or errors or omissions of the Client. Use of any information obtained by way of QWIK MEDIA is at the Client's own risk, and QWIK MEDIA specifically denies any responsibility for the accuracy or quality of information obtained through its services. Connection speed represents the speed of an end-to-end connection. QWIK MEDIA does not represent guarantees of speed or availability of end-to-end connections. QWIK MEDIA expressly limits its damages to the Client for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. QWIK MEDIA specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

#### **IV. Trademarks & Copyrights:**

Client warrants that it has the right to use any applicable trademarks or copyrighted material used in connection with this service.

#### **V. Age:**

Client certifies that he or she is of full legal age to enter into this agreement.

#### **VI. Policies**

Client agrees to all terms in the QWIK MEDIA Policies and Terms Of Service Agreement provided with this agreement.

QWIK MEDIA network resources used by Client may not be used to impersonate another person or misrepresent authorization to act on behalf of others or QWIK MEDIA. All messages transmitted by Client should correctly identify the sender. Users may not alter the attribution of origin in electronic mail messages or posting. Users must not attempt to undermine the security or integrity of computing systems or networks and must not attempt to gain unauthorized access.

#### **VII. Termination:**

1. This Agreement may be terminated by either party, without cause, by giving the other party 30 days written notice. Written notice may be by postal, email or fax transmission. QWIK MEDIA reserves the right to verify all cancellations before terminating service. Notwithstanding the above, QWIK MEDIA may terminate service under this Agreement at any time, without penalty, if the Client fails to comply with any of the terms of this Agreement.
2. Termination for any violation of the [QWIK MEDIA Policies and Terms of Service Agreement](#) shall be immediate. QWIK MEDIA may, at its option, cancel or suspend service *immediately* should it believe Client has violated or is about to violate the QWIK MEDIA Terms of Service agreement or should the Client fail to remit payment to QWIK MEDIA by the Client's invoice due date. The Client understands that they may be liable for certain fees relating to termination when such termination is due to Unsolicited Commercial E-Mail. Such fees are outlined in the [QWIK MEDIA Policies and Terms of Service Agreement](#).
3. **Notice of cancellation**  
Written notice of cancellation may be by postal mail, email or fax transmission.

### **VIII. Limited Liability:**

1. Client expressly agrees that use of the Server offered by QWIK MEDIA is at Client's sole risk. Neither QWIK MEDIA, its employees, affiliates, agents, merchants licensors or the like, warrant that the Server service will not be interrupted or error free; nor do they make any warranty as to the results that may be obtained from the use of the Server service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the QWIK MEDIA Server service.
2. Under no circumstances, including negligence, shall QWIK MEDIA, its offices, agents or anyone else involved in creating, producing or distributing QWIK MEDIA's Server service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the QWIK MEDIA Server service; or that results from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission or any failure of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorized access to QWIK MEDIA's records, programs or services. Client hereby acknowledges that this paragraph shall apply to all content on QWIK MEDIA's Server service.
3. Notwithstanding the above, Client's exclusive remedies for all damages, losses and causes of actions whether in contract, tort including negligence or otherwise, shall not exceed the aggregate dollar amount which Client paid during the term of this Agreement.

### **IX. Lawful Purpose:**

Client may only use QWIK MEDIA's Server service for lawful purposes. Transmission of any material in violation of any Federal, State or Local regulation is prohibited. This includes, but is not limited to copyrighted material, material legally judged to be threatening or obscene, or material protected by trade secrets.

### **X. Indemnification:**

Client agrees that it shall defend, indemnify, save and hold QWIK MEDIA harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys' fees asserted against QWIK MEDIA, its agents, its customers, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by Client, its agents, employees or assigns. Client agrees to defend, indemnify and hold harmless QWIK MEDIA against Liabilities arising out of any of the following:

- i. any injury to person or property caused by any products sold or otherwise distributed in connection with QWIK MEDIA's Server service;
- ii. any material supplied by Client infringing or allegedly infringing on the proprietary rights of a third party;
- iii. copyright infringement; and
- iv. any defective product which Client sold on the Server offered by QWIK MEDIA.

## **XI. Domain Name Ownership, Disputes, and Use**

Any domain name registered by QWIK MEDIA on behalf of Client is the property of said Client after the Client has paid QWIK MEDIA any registration fees that QWIK MEDIA has incurred on behalf of the client. QWIK MEDIA claims no ownership over Client domain names that the Client has paid to register. At its option, QWIK MEDIA will either arrange for any billing for names registered by QWIK MEDIA on behalf of Client to be sent directly by the registrar or agent thereof to the Client, or QWIK MEDIA will directly bill the client for these registration fees plus applicable expenses, and/or service charges, if any.

Client agrees that QWIK MEDIA may be presented with information that Client's domain name possibly violates the trademark rights or other intellectual property rights of a trademark or other intellectual property rights owner. In case of such action, Client agrees to the following:

- i. Client agrees to hold QWIK MEDIA harmless of any action taken by such owner regardless of the outcome of such dispute and regardless of whether Domain Name Service hosting for Client's domain is hosted at or continued to be hosted at QWIK MEDIA.
- ii. Client agrees that QWIK MEDIA has the right to discontinue name service in the event of such dispute over a Client's domain name.
- iii. **Client agrees that should QWIK MEDIA discontinue name service for Client's domain upon notification of such dispute that QWIK MEDIA will not be liable for any loss of business, interruption of business, loss of Client's domain name, or 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, even if QWIK MEDIA has been advised of the possibility of such damages.**
- iv. In no event shall QWIK MEDIA's maximum liability exceed one hundred (\$100.00) dollars.

Client agrees that a QWIK MEDIA contact person shall be named as the “technical or zone contact” for any domains hosted at QWIK MEDIA. Client agrees that QWIK MEDIA may create and use network resources with the Client's domain name for administrative, testing, and network infrastructure enhancement purposes.

## **XII. Contract Revisions:**

Revisions to this Contract will be considered agreed to by the Client on renewal of QWIK MEDIA Services as specified in Section I. Financial Arrangements.

**This Agreement and QWIK MEDIA Policies and Terms of Service Agreement constitute the entire understanding of the parties. Any changes or modifications to this Contract are agreed to by the parties upon renewal of services. This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario.**