

# **WEBSITE AND EMAIL HOSTING AGREEMENT**

This Web Site and Email Hosting Agreement ("agreement") Is by and between Practical Programs, Inc. ("PracProg") a Tennessee Corporation, and you, your heirs, legal representatives, successors, assigns, agents and contractors ("You") and is effective as of the date of electronic execution. This Agreement sets forth the terms and conditions of Your use of PracProg's Web Site and Email services (collectively, the "Services") and represents the entire agreement between You and PracProg. By using the Services, You acknowledge that You have read, understand and agree to be bound by all the terms and conditions of this Agreement, along with any new, different or additional terms, conditions, or policies.

In addition to transactions entered into by You on Your behalf, You also agree to be bound by the terms of this Agreement for transactions entered into on Your behalf by anyone acting as Your Agent or representative, and any transactions entered into by anyone who uses the account You have established with PracProg, whether or not the transactions were entered into on Your behalf.

In addition to the terms and conditions in this document, You agree also to PracProg's current General Terms and Conditions. This Agreement is not intended to supplant or supersede PracProg's current General Terms and Conditions.

## **1. Description of Service**

PracProg currently provides the Services to its customers for a monthly fee. PracProg will host Your web site on PracProg's the Services servers, provided, however, You abide by the terms and conditions set forth herein and in each of PracProg's policies and procedures.

### **License of Your website content**

PracProg grants to You, and You accept from PracProg , a non-exclusive, worldwide and royalty free license to copy, display, use and transmit on and via the Internet Your website content in connection with PracProg's performance or enforcement of this Agreement.

### **Availability of Services**

Subject to the terms and conditions of this Agreement, PracProg shall attempt to provide the Services for twenty-four (24) hours a day, seven (7)

days a week throughout the term of this Agreement. You agree that from time to time the Services may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that PracProg may undertake from time to time; or (iii) causes beyond the control of PracProg or that are not reasonably foreseeable by PracProg , including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks network congestion or other failures. You agree that PracProg has no control of availability of the Services on a continuous or uninterrupted basis.

### **Service Availability Guarantee.**

PracProg offers a service uptime guarantee for the Services of 99.9% ("Service Uptime") of available time. If PracProg fails to maintain this level of service availability, You may contact PracProg and request a credit of 5% of Your monthly hosting fee from PracProg for that month. The credit may be used only for the purchase of further products and services from PracProg , and is exclusive of any applicable taxes. The credit does not apply to service interruptions caused by (i) periodic scheduled maintenance or repairs that PracProg may undertake from time to time; (ii) errors caused by You from custom scripting or coding; (iii) outages that do not affect the appearance of the web site but merely affect access to the web site such as FTP and email; (iv) causes beyond the control of PracProg or that are not reasonably foreseeable by PracProg ; and (v) outages related to the reliability of certain programming environments. Total Service Uptime shall be solely determined by PracProg and shall be calculated on a monthly basis.

### **Web Site Content**

If you acquire or are given access to your website through any means such as ftp that allows you change the content of Your website then You shall be solely responsible for providing, updating, uploading and maintaining Your website and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through Your web site, including, without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, meta tags, domain names, software and text. Notwithstanding anything in this Agreement to the contrary, in the event You are using ad-supported hosting, in no event shall Your web site consist of the following: search results, registration, "thank you", error, email or chat pages, pages comprised primarily of other advertising or pages that contain any of the following types of content: pornographic,

obscene or excessively profane content or content intended to advocate or advance computer hacking or cracking, gambling, illegal activity, drug paraphernalia, hate, violence or racial or ethnic intolerance.

If you do not acquire and are not given access to your website through a means such as ftp that allows you change the content of Your website then PracProg is responsible for maintaining appropriate site content based on the information You provided PracProg, through, written, oral, or electronic communication. You are responsible for providing content change requests in a timely manner and You agree to give PracProg at least 2 business days to make any changes.

## **2. Your Obligations**

You represent and warrant to PracProg that: Your Content does not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that actually or potentially violate any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person and that You own Your website content and all proprietary or intellectual property rights therein, or have express written authorization from the owner to copy, use and display the content on and within Your web site. If Your web site includes GIF images you must ensure that your GIF images are licensed with Unisys or were created with Unisys Authorized Software. You also warrant that the web site being hosted by PracProg will not be used in connection with any illegal activity.

You are responsible for ensuring that there is no excessive overloading on PracProg's DNS or servers. In the event that You exceed Your allotted bandwidth and thereby overload PracProg's DNS or servers, You shall be assessed any and all fees, costs and penalties associated with such overloading. You may not use PracProg's servers and Your web site as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, denial of service, or other abusive activities. Server hacking or other perpetration of security breaches is prohibited and PracProg reserves the right to remove sites that contain information about hacking or links to such information. Use of your web site as an anonymous gateway is prohibited. PracProg prohibits the use of software or scripts run on its servers that cause the server to load beyond a reasonable level, as determined by PracProg. You agree that PracProg reserves the right to remove Your web site temporarily or permanently from its servers if PracProg is the recipient of activities that threaten the stability of its network. Further, if You are using ad-supported hosting, You acknowledge and agree that PracProg has the right to

terminate Your Services in its sole discretion and for any reason, including, but not limited to, Your failure or unwillingness to comply with the terms and limitations of this Agreement, specifically, the content and material restrictions set forth in this Agreement.

You agree not to engage in unacceptable use of any Services, which includes, without limitation, use of the Services to: (i) disseminate or transmit unsolicited messages, chain letters, unsolicited commercial email, or unreasonably large volumes of email on a daily basis, provided, PracProg, in its sole discretion, may permit You, if You have a legitimate purpose and after request, to send more email than PracProg's standard STMP relay limit; (ii) disseminate or transmit any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (iii) disseminate or transmit files, graphics, software or other material, data or work that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person; (iv) create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication; (v) export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses and/or exemptions; (vi) interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which You do not have authorization to access or at a level exceeding Your authorization; (vii) disseminate or transmit any virus, trojan horse or other malicious, harmful or disabling data, work, code or program; (viii) engage in any other activity deemed by PracProg to be in conflict with the spirit or intent of this Agreement or any PracProg policy; or (ix) use Your server as an "open relay" or similar purposes.

### **Email Marketing and Mass Email Operations**

If You use email marketing strategies, You agree to make Your mailing list a "double opt-in" system as defined by the appropriate laws and association guidelines. In general, this term indicates, that after a user as been initially placed on your email list for communications, they must respond affirmatively to an email which represents a second communication on the topic indicating their desire to be on the marketing list. You must also include an option on all emails to allow individuals to opt out of the list.

Failure to be able to prove that you are these techniques without an appropriate exception, can result in lost of email priveledges for Your accounts.

Appropriate exceptions are defined at the Solet discretion of PracProg. An example could include an email list that is used solely for the dissemination of an organization's information about its policies and events to its members and only its members, provided the membership does not consider the number of emails excessive.

### **Storage and Security**

At all times, You shall bear full risk of loss and damage to your web site and all of Your web site content. You are entirely responsible for maintaining the confidentiality of Your password and account information. You agree that you are solely responsible for all acts, omissions and use under and charges incurred with Your account or password or in connection with the Site or any of Your web site content displayed, linked, transmitted through or stored on the Server. You shall be solely responsible for undertaking measures to: (i) prevent any loss or damage to Your web site content; (ii) maintain independent archival and backup copies of Your web site content; (iii) ensure the security, confidentiality and integrity of all your web site content transmitted through or stored on PracProg servers; and (iv) ensure the confidentiality of Your password. PracProg's servers and virtual dedicated services are not an archive and PracProg shall have no liability to You or any other person for loss, damage or destruction of any of Your content. You shall at all times use the Services as a conventional and/or traditional web site. You shall not use the Service in any way, in PracProg's sole discretion, that shall impair the functioning or operation of PracProg's Services or equipment. Specifically by way of example and not as a limitation, You shall not use the Services as a repository or instrument for placing or storing archived files and/or material that can be downloaded through other web sites.

### **3. Hosting Service Provider's Rights**

You agree that PracProg has the right to monitor the service electronically from time to time and to disclose any information as necessary to satisfy the law, or to protect itself or its subscribers. PracProg reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this agreement. PracProg also reserves the right to refuse refunds in cases where PracProg believes abuse has taken place.

PracProg reserves the right to monitor any and all communications through or with our facilities. You agree that PracProg is not considered a

"secure communications medium" for the purposes of the ECPA, and that no expectation of privacy is afforded.

PracProg does not set a usage limit on our Services, however, if a customer consumes large amounts of system resources, PracProg reserves the right to send an e-mail notice to the customer and set a limit on the customer's account, charge additional fees, or change the service plan.

PracProg reserve all rights to discontinue immediately Your email services without refunding otherwise applicable fees in the following circumstances:

- You violate our Email and Email Marketing policies and put PracProg resources or reputation in significant danger,
- You are listed as a spammer or are black listed by a reputable third party email monitoring or black listing service that considers you to be a spammer or that "blacklists" any server traffic related to PracProg because of Your activities and we are unable to resolve the issue in a timely manner. PracProg has sole discretion to determine what is considered a reputable third party service. One example of a reputable service would be SpamHaus.
- Any of our vendors, especially including our co-location facility, threaten to take punitive actions and the apparent cause is related to your email activities.

These email policies are put in place, because it is the responsible way to act and because our sites share resources with other sites. Harmful actions on one site can negatively affect many others.

#### **4. Terms of Payment, Fees, Commencement of Services, Termination Etc.**

##### **Terms of Payment and Fees.**

You agree to pay PracProg appropriate payment for the services received from PracProg as invoiced. Payment may be by check. You agree to provide PracProg with up-to-date billing information including an appropriate email address for delivery of invoices.

All invoices will be emailed to the recipient. No receipts or invoices will be sent by regular mail.

You have thirty (30) days of due period to make payments. After thirty (30) days PracProg will charge late fees as determined by PracProg. Once during each subsequent month that payment has not been received, PracProg, at its sole discretion, will either assess additional late fees on the balance or terminate the hosting agreement.

Hosting shall be billed monthly. However, invoice amounts less than \$50.00 per month which are not on an automatic draft or credit card payment are billed quarterly.

### **Refund Policy**

In the event that PracProg terminates Your services, no refund shall be issued. In the event that You terminate your services, you may be eligible for a refund of fees based on the date of termination as defined below and Your current balance of accounts with PracProg.

### **Sales Tax Policy**

PracProg is required to charge Sales Tax according to the rules and regulations of the State of Tennessee. Unless otherwise noted, it is safest to assume that sales tax will be applied to all work performed for consumption in Tennessee, including delivery on a server located in Tennessee to a Tennessee company or individual. As of February 14, 2008, it is PracProg's understanding that training and hosting sales are not taxable; however, this last sentence should not be considered legal advice.

### **Appropriate Time Frames For Requesting Work Revisions**

If You believe that PracProg has made an error in programming or site updates etc. and if you believe that PracProg should provide a correction free of charge, you have 30 days from the completion of the work to bring such facts and the complete documentation of the requested changes to PracProg's attention. Otherwise, the requested change will be treated as a new request for work. The 30 day time period will begin on the earlier of the date PracProg notifies you that the work is complete or of the invoice date of an invoice from PracProg for the work completed. Notifications sent via mail will use the postmark date as the notification date.

### **Commencement of Services**

In the event that **we are creating a new site** and it is not being transferred from another website host, hosting charges shall commence upon the date the site becomes public or is otherwise used to conduct Your business. Otherwise, hosting charges will commence when DNS points to PracProg servers.

**Termination of PracProg services and Transfer of Services Away from PracProg.**

In the event You terminate Your services, moving your web site off of the PracProg servers is Your responsibility. In no case will PracProg will transfer or FTP Your web site to another provider. In the event Your use of the Services is terminated, PracProg will not transfer or manage Your Services or Your website content. As courtesy to you, PracProg may, at its sole discretion, provide access to the website and related content in order that you may move the content to a new service provider. Upon termination we will not provide access to any website content that is defined as illegal, except as required by law.

If You terminate services and transfer website content, you are responsible for all accrued charges through the time that that You notify PracProg in writing that content and services have been successful transferred. The date of Termination shall be considered the date that PracProg receives notice from You that DNS resolves to another host or the date that we confirm with You that DNS resolves to another host, which ever is later.

**Severability**

In case any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein any other application hereof shall not in any way be affected or impaired.