



Shared Web Hosting Agreement

The following Terms and Conditions apply to Radiant Shared Web Hosting and associated services purchased via Radiant's or partners' web sites. Other services, such as broadband data connections to customer's locations, private networking, dedicated servers, and hosted Microsoft Exchange are subject to separate written contracts.

Customer is presumed to have accepted these terms and conditions by i) signing up for the Services on a web site, and ii) commencing any use of the Services.

1 Service

Radiant will sell and the Customer will purchase certain services. Radiant's services are defined as Internet, telecommunications, network, software, and information services used by the Customer as provided by Radiant. These services also include the provision of access to computing, telecommunications, software, and information services provided by others via the global Internet.

- a) Web Hosting Service means - Any act of serving the Customer, being provided by Radiant, regardless of its duration and whether it is a paid service or a service for free. The Services are provided "as is" and "as available" without warranties or conditions of any kind.
- b) Without limiting the scope of item 1.a above, Radiant will provide services on its host computing systems to individual Customers in exchange for payment of fees and compliance with the terms and conditions of this document.
- c) Connectivity Service means connection of the customer to the Internet via a telecommunications facility.

2 Domain Name Registrations

Radiant's role in the registration of a domain name is limited to the submission of the registration request to the appropriate registrar (the "Registrar"). Radiant does not and cannot guarantee that a particular application for a domain name will be accepted or approved. Please note each individual domain name constitutes a single submission.

Radiant will submit applications to the Registrar as provided. It is the Registrant's or Customer's responsibility to provide accurate information. Any change to the original information has to be made directly to the Registrar and not to Radiant. Be advised that upon registering a domain name with Network Solutions, Inc or WebNames.ca, Inc. the Customer will be subject to the Terms and Conditions of these registrars, or other registries as applicable.

3 Term

The term of use is month to month, unless otherwise agreed upon. Web Hosting services are automatically renewed on the final day of the Term unless terminated in accordance with Section 4 below.

4 Termination

- i) For Cause. Either party may terminate the Customer's Services for cause without penalty in the event that the other party breaches any material term of this Policy, including but not limited to Section 7 of this Policy. Prior to such termination, the party intending to terminate shall first give the other party written notice of its intent to terminate, which shall clearly describe the problem(s) constituting cause. Customer shall cooperate with Radiant in enforcing this Terms of Use Policy.
- ii) For Convenience (Month-to-Month Service Customers). Customer may terminate their Services at any time for convenience after giving Radiant at least 30 days written notice before the following payment period. In the event of such termination, Customer forfeits all prepaid fees.



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- iii) For Convenience (Prepaid Service Customers). Customer may terminate Services at any time for convenience by giving Radiant at least 60 days written notice. In the event of such termination, Customer forfeits all prepaid fees.

5 Abuse of Services

Customer shall abide by all terms of Radiant's Acceptable Use Policy ("AUP") as posted at <http://legal.radiant.net/>. In addition, Customer shall not use the shared Web hosting computers and infrastructure in such a way that:

Many concurrent processes are created or excessive amounts of memory or CPU are consumed for extended periods of time (more than a few minutes)

A shared Radiant SMTP (Simple Mail Transfer Protocol) server is used to send more than:

- 50 email per minute, or
- 2,500 emails per day, or
- 10,000 emails per month

A single email is addressed to 150 recipients or more

A file larger than 10MB is attached to an email.

Radiant may use any and all of its Rights and Remedies as specified in the AUP if Customer abuses the Services.

6 Billing

The Customer is responsible for all applicable charges for services rendered, as set forth in the Web Hosting and Hosting Options pricing structure, as detailed at www.radiant.net at time of order submission, plus all applicable taxes. Web Hosting is a pre-paid service. Invoicing for Web Hosting Services is delivered after the charge has already been applied to the credit card provided. If the Customer is paying by cheque or money order, they will be invoiced in advance of payment due. Customer is required to pay in a minimum of three-month increments when paying by cheque or money order. Invoices may be delivered by email, fax or mail. Service interruption does not relieve the Customer from the obligation to pay the monthly charge. Additional fees may apply for NSF payments, reactivations, terminations, and changes of service. Accounts are in default if payment is not received within 30 days after day of invoice. If the Customer defaults, the Customer agrees to pay Radiant its reasonable expenses including solicitor and collection agency fees, incurred in enforcing its rights under this Agreement. Accounts in default are subject to an interest charge of 1.5% per month (19.56% per annum).

7 IP Addresses

Radiant maintains control and ownership of any and all IP numbers and IP addresses that it may to Customer and reserves in its sole discretion the right to change or remove any such IP numbers and addresses. In particular, upon termination of this Agreement, Customer has no rights to any IP addresses assigned to Customer by Radiant.

8 Age of Majority

Radiant cannot accept agreements and payments from persons under the age of 18 years. Therefore, Radiant requires that its agreements be made with a person who is qualified to contract. As such, the Customer must be over the age of 18 years. Otherwise, a parent or guardian must accept this Agreement and ensure the proper payment.

9 Modifications

Radiant may, from time to time, modify the charges (including late payment charges) or any other term or condition of its Services provided that it gives the Customer at least 30 days advance written notice. The Customer shall have the option to continue their Services at the new charge or terminate their Services upon giving written notice to Radiant prior to the expiration of the 30 day notice period.

10 Disclaimer of Warranty

CUSTOMER AGREES THAT CUSTOMER USES THE BROADBAND SERVICES AND EQUIPMENT PROVIDED HEREUNDER AT ITS OWN RISK. RADIANT PROVIDES ALL BROADBAND SERVICES AND EQUIPMENT ON AN "AS IS BASIS" WITHOUT WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. RADIANT DOES NOT WARRANT THAT BROADBAND SERVICES WILL PERFORM AT A PARTICULAR SPEED, WILL BE UNINTERRUPTED, WILL HAVE NO DATA LOSS, OR WILL BE ERROR-FREE OR COMPLETELY SECURE.

11 Data Back-up/Restores

Radiant cannot be held responsible for backing up of clients data/websites in the shared environment. Clients must maintain up to date backups of their content on their own accord. If at any time a client requires a restore of their website from our data centre backups the appropriate charges will be applied to their account. However we do not maintain that we will always have a current copy of their data

12 Limitation of Liability and Liquidated Damages

IN NO EVENT SHALL RADIANT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY ECONOMIC LOSS, LOSS OF BUSINESS OR OTHER DAMAGE INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA. RADIANT SHALL NOT BE LIABLE FOR ANY DAMAGES ASSOCIATED WITH THE INTERRUPTION OR LOSS OF USE OF BROADBAND OR SHARED WEBHOSTING SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RADIANT RESERVES THE RIGHT TO UPGRADE, ALTER, OR DECOMMISSION SERVICES AS IT SEES FIT IN ORDER TO PROVIDE THE BEST LEVEL OF SERVICE TO THE CUSTOMER OR AFFILIATE. NEITHER PARTY WILL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE STRICT LIABILITY FOR INDIRECT OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT. RADIANT AND CUSTOMER AGREE THAT IF RADIANT SHOULD BE FOUND LIABLE FOR LOSS OR DAMAGE DUE FROM FAILURE OF RADIANT TO PERFORM ANY OF THE OBLIGATIONS HEREIN, RADIANT'S LIABILITY FOR DAMAGES SHALL BE LIMITED TO THREE MONTHS OF THE MONTHLY RECURRING FEES CHARGED TO CUSTOMER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, AND THIS LIABILITY SHALL BE EXCLUSIVE. THE PROVISIONS OF THIS SECTION SHALL APPLY IF LOSSES OR DAMAGES, IRRESPECTIVE OF CAUSE OR ORIGIN, RESULT DIRECTLY OR INDIRECTLY TO PERSONS OR PROPERTY, FROM PERFORMANCE OR NONPERFORMANCE OF THE OBLIGATIONS IMPOSED BY THIS CONTRACT, OR FROM NEGLIGENCE, ACTIVE OR OTHERWISE, OF RADIANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS, AGENTS AND ASSIGNS.

13 Indemnification

Customer: Customer agrees to defend, indemnify and hold harmless Radiant, its officers, directors, employees, suppliers, agents, and assigns from any claims, liabilities, losses, costs or damages, including lawyer's fees, related to or arising out of (i) the acceptance of any Broadband Service by Customer or the provision or lack of provision or delay in provision of any Broadband Service to Customer, or assigns' use of the Broadband Service; and (ii) any breach of this Agreement by Customer whether or not caused by the negligence or omission of Radiant or those for whom it is responsible at law Radiant: Subject to Section 13 Radiant agrees to defend, indemnify and hold harmless Customer, its officers, directors, employees, suppliers, agents, and

assigns from any claims, liabilities, losses, costs or damages, including lawyer's fees, related to or arising out of any breach of this Agreement by Radiant.

14 Miscellaneous Provisions:

Independent Contractors. The parties agree that they are independent contractors and that this Agreement and relationship between the Parties hereby established does not constitute a joint venture, agency or contract of employment between them, or any other similar relationship. Neither party has the right or authority to create an obligation or responsibility on behalf of the other. **Severability:** Each provision of this Agreement is declared to be a separate and distinct provision and to be severable from all other such separate and distinct provisions. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. **Subcontractors:** Radiant may subcontract the performance of certain services to third parties. **Force Majeure:** Neither party shall be responsible for any failure to perform its obligations under this Agreement (except for payment obligations) if such failure is caused by acts of God, war, strikes, revolutions, earthquakes, lack or failure of transportation facilities, law or governmental authority or other causes that are beyond the reasonable control of that party. **Entire Agreement:** This Agreement and the Schedules attached hereto constitute the entire agreement between Customer and Radiant concerning the Broadband Services, and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals, or undertakings, oral or written, with respect to the subject matter expressly set forth herein. Any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties. **No Waiver:** The failure of either Party at any time to require performance by the other party of any provision, condition or covenant in this Agreement shall in no way affect its right thereafter to enforce the provision, condition or covenant, nor shall the waiver by either Party of any breach of any provision, condition or covenant in this Agreement be taken or held to be binding upon the Party, and the waiver shall not be taken or held to be a waiver of any future breach of the same provision, condition or covenant. **Survival:** The provisions of this Agreement relating to the limitation of liability, confidentiality, indemnification, termination and this provision shall survive the early termination or expiration of this Agreement. **Assignment:** This Agreement is not assignable or transferable by Customer without prior written consent of Radiant, which shall not be unreasonably withheld. Radiant may freely assign the Agreement. **Successors:** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors, assigns, and legal representative of any type whatsoever. **Language:** The parties have required that this Agreement and all documents relating thereto be drawn up in English. Les parties ont demande que cette convention ainsi que tous les documents que s'y rattachent soient rediges en anglais. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one Agreement. **Notice:** Any notice or consent required or permitted under this Agreement shall be in writing and effective on the date received by the other party. **Governing Law:** This Agreement shall be governed by and interpreted under the laws of the Province of British Columbia and the federal laws of Canada applicable therein. **Venue and jurisdiction** shall exclusively be in British Columbia.