



## ADDITIONAL TERMS AND CONDITIONS FOR WEBSITE AND EMAIL HOSTING AND DEVELOPMENT

- 1. BUYER'S RESPONSIBILITIES.** Buyer shall be solely responsible for providing all customer support regarding products or services offered on Buyer's Web Site or via Buyer's Electronic Mail communications to Buyer's customers or visitors. Buyer will, unless otherwise specifically determined by the provision of services by Seller as set forth in an incorporated agreement, be solely responsible for the development, content, operation and maintenance of the Web Site and for all materials that appear on the Web Site. Buyer will be wholly responsible for the following matters, and Seller disclaims all liability for these matters with respect to the Web Site: (i) Technical operation of its Web Site and all related equipment; (ii) Creating and posting product descriptions on its Web Site for those products sold directly on its Web Site; (iii) Ensuring the accuracy and appropriateness of materials posted on its Web Site (including all product-related materials); (iv) Ensuring that materials posted on its Web Site do not violate or infringe upon the rights of any third party; (v) Ensuring that materials posted on its Web Site are not libelous or otherwise illegal. It is specifically understood and agreed that Buyer's Web Site and/or Electronic Mail may be hosted and maintained on a shared server, together with Web Sites and/or Electronic Mail other than that or those of Buyer. In the event that Buyer's utilization of any such shared server generates Internet traffic in an amount greater than that determined by Seller's engineer(s) to be reasonable for performance reliability, Buyer agrees to have its Web Site and/or Electronic Mail placed and hosted in Buyer's own Web server co-located at Seller's facility, at Buyer's expense.
- 2. INDEPENDENT CONTRACTORS.** Buyer and Seller are each independent contractors with respect to the services performed hereunder. Nothing contained herein shall be deemed to have created the relationship of partner, principal, agent, or a joint venture between the Parties. Neither Party has the right or authority to incur obligations of any kind in the name of, or for the account of, the other party, nor to commit or bind the other party to any contract or other obligation.
- 3. TRADEMARKS, LOGOS AND COPYRIGHTS.** Except as expressly provided herein, no property, license, permission or interest of any kind in or to the use of any trademark, trade name, color combination, insignia or device owned or used by a party is or is intended to be given or transferred to or acquired by the other party by the execution, performance or nonperformance of this agreement or any part thereof. Each party agrees that it shall in no way contest or deny the validity of, or the right or title of the other party in or to such trademark, trade name, color combination, insignia or device, by reason of this agreement, and shall not encourage or assist others directly or indirectly to do so, during the lifetime of this agreement and thereafter. In addition, neither party shall utilize any such trademark, trade name, color combination, insignia or device in any manner that would diminish its value or harm the reputation of the other party. Upon termination of this agreement, any and all rights or privileges of each party to the use of the other party's trademark, trade name, color combination, insignia or device will cease.
- 4. SOFTWARE LICENSE FOR WEB SITE DESIGN.** Software delivered hereunder is licensed and not sold. All programs and/or scripts prepared for Buyer and/or provided for use with Buyer's Web Site are the property of Cramer Development Incorporated. During the term of this agreement, Buyer is granted a limited license to use Seller's programs or programs of Seller's subcontractor for their intended purpose(s) without limiting, reverse engineering, reselling and/or licensing to third parties, or altering such programs and/or scripts. Buyer's limited licensing rights expire upon the termination of this agreement. Seller may terminate this license upon written notice for violation of any of the terms of the foregoing license.
- 5. WARRANTY.** Given the complex nature of the Internet and the Seller's reliance on third parties for equipment, software, telecommunications connections, routing and Internet bandwidth, all such access and services, without limitation, are provided to the Buyer on an AS IS, AS AVAILABLE basis and no warranties are possible to the Buyer, or anyone, regarding the ability or speed of the Web Site to be accessed from any location on the Internet. EXCEPT AS SET FORTH ABOVE, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY REGARDING THE NUMBER OF VISITS TO THE WEB SITE OR ANY OTHER MATTER RELATING TO THE VALUE OF THE BENEFITS RECEIVED UNDER THIS AGREEMENT.
- 6. LAWFUL COMPLIANCE.** Both parties shall comply with all applicable laws and government regulations (both from the United States as well as the rest of the world where applicable) concerning consumer data privacy. With regard to this Agreement, Buyer will make commercially reasonable efforts: (i) to avoid soliciting customers where the customer is known to be under the age of 18 (each such person a "child"), or (ii) to avoid taking actions that would put the other party in jeopardy of being deemed a "Web Site targeted to Children" as that term is defined in the Children's Online Privacy Protection Act of 1998. Further, with regard to this Agreement, in the event either party discloses to the other personally identifiable data concerning users of the disclosing party's services, the personally identifiable data of those persons actually known to the disclosing party to be under the age of 13 shall not be disclosed.
- 7. ADDITIONAL LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, BUYER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS SOLE COST AND EXPENSE, SELLER FROM ANY AND ALL THIRD-PARTY CLAIMS, ACTIONS, PROCEEDINGS, EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES), DAMAGES OR LIABILITIES ARISING OUT OF, OR RELATED IN ANY MANNER WHATSOEVER TO, ITS WRONGFUL ACTS OR OMISSIONS (WHETHER TORTUOUS OR CONTRACTUAL) IN PERFORMING OR FAILING TO PERFORM ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT OR THE BREACH OF ANY WARRANTIES OR REPRESENTATIONS CONTAINED IN THIS AGREEMENT. IN THE EVENT OF A BREACH OF THIS AGREEMENT BY SELLER CONCERNING ANY PROVISION OF SERVICES TO BE PROVIDED BY SELLER UNDER THIS AGREEMENT, THE MAXIMUM DAMAGES TO BE PAID OR PAYABLE TO THE BUYER FOR SUCH BREACH SHALL BE REIMBURSEMENT AND/OR WAIVER OF AMOUNTS THAT BUYER HAS OR WOULD PAY FOR SERVICES WHICH WERE NOT PROVIDED AS REQUIRED UNDER THIS AGREEMENT.**
- 8. ENTIRE CONTRACT.** These Additional Terms and Conditions for Website and Email Hosting and Development, together with the Standard Terms and Conditions shall comprise the exclusive terms, conditions and agreements of the parties respecting sale of equipment or services described herein, and supersede any provisions on the face and reverse side of Buyer's order or any prior agreement inconsistent with the provisions hereof. Acceptance by Buyer of such equipment or services covered hereunder shall, absent a contrary agreement in writing signed by Seller, constitute acceptance of these Additional Terms and Conditions for Website and Email Hosting and Development. The invalidity of the whole or in part of any provisions hereof shall not affect the validity of any other provision. The headings of the sections herein have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.