

## **GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions 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 general terms and conditions of Your use of services provided by PracProg and any other contractual relationship in which PracProg is providing you assistance ("Services").

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 or 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In the event of a conflict between documents, the terms of this document are superceded by the terms of a specific contract or the terms specified for a specific type of service, such as Website and Email Hosting.

### **1. Indemnification.**

(a) You represent and warrant that you own or have obtained the rights to use the Your Intellectual Property in the manner contemplated by any and all agreements between PracProg and You. You shall indemnify and hold harmless PracProg and PracProg's directors, officers, and employees from and against any loss, damages, or injuries PracProg or PracProg's directors, officers, or employees suffer or incur as a result of any suit, claim, or proceeding based on (i) any claim that Your Intellectual Property infringes the intellectual property or trade secrets of any third party, (ii) any claim of personal injury or product liability with respect to Your Intellectual Property; or (iii) any claim that Your Intellectual Property violates any law or regulation. You shall pay any damages, costs, expenses, and fees (including reasonable attorneys' fees) incurred by PracProg or PracProg's directors, officers, agents, representatives or employees arising from the foregoing.

(b) PracProg represents and warrants that it owns or has obtained the rights to use the PracProg Intellectual Property in the manner

contemplated by this Agreement. PracProg shall indemnify and hold You harmless from and against any loss, damages, or injuries You suffer or incur as a result of any suit, claim, or proceeding based on any claim that PracProg's Intellectual Property infringes the intellectual property or trade secrets of any third party. PracProg shall pay any damages, costs, expenses, and fees (including reasonable attorneys' fees) incurred by You from the foregoing.

## **2. Disclaimer of Warranties; Limitation of Liability.**

PracProg expressly disclaims to the fullest extent permitted by law, any and all warranties, whether expressed or implied, statutory or otherwise, including but not limited to, implied warranties of merchantability, fitness for a particular purpose, and non-infringement. PracProg makes no warranty that its services will be uninterrupted, secure, virus free, or error free. PracProg makes no representations or warranties as to the accuracy, reliability, or security of any communications or Internet services or transmissions. PracProg is not responsible or liable for any damage or losses to your computer system, data, or business that results from the use of communications or Internet services or transmissions.

You agree that under no circumstances shall PracProg, its directors, officers, agents, representatives or employees be liable for any consequential, special, direct, indirect, exemplary, incidental, or punitive damages of any kind, including, but not limited to, lost profits or lost data, regardless of whether PracProg has been previously advised of the possibility of such damages.

Notwithstanding any provision to the contrary in this Agreement, PracProg's aggregate liability in connection with this Agreement and Services provided hereunder, regardless of whether the alleged liability is based on contract, tort, or otherwise, shall not exceed the aggregate fees paid by You to PracProg for the Services. The foregoing states PracProg's entire potential liability related to this Agreement and the Services provided hereunder.

## **3. Notice.**

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile (with confirmation), or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

To PracProg: Eric Hutton  
Practical Programs, Inc.  
6612 Fleetwood Drive  
Nashville, TN 37209  
(615) 479-7518 (Telephone)

To Client: You agree to provide a regular mail address and complete telephone number for PracProg to communicate changes in agreements to you. You shall also notify PracProg with corrected information, any time this contact information changes.

#### **4. Confidentiality.**

You and PracProg understand that in connection with the provision of the Services, You may find it necessary to disclose to PracProg business processes, Client data, and/or other sensitive business information that You consider confidential or proprietary. You agree to clearly mark any such information as confidential before its delivery to PracProg. In connection with any such confidential information, PracProg agrees to make reasonable efforts to maintain its confidentiality. PracProg will not be responsible for any special, incidental, or consequential damages suffered by You as a result of PracProg's breach of the provisions in this covenant or any other cause.

You acknowledge that PracProg may provide You with information, including PracProg's Intellectual Property, that may be confidential or proprietary. Client agrees to use reasonable efforts to maintain the confidentiality of such information. The confidentiality provisions contained in this section 4 shall survive the termination of this Agreement.

#### **5. Waiver.**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, shall be construed as a waiver of any other breach, failure, right or remedy, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

## **6. Headings.**

The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

## **7. Counterparts.**

This Agreement may be executed in counterparts and by fax.

## **8. Choice of Law; Consent to Jurisdiction and Forum Selection.**

This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, without giving effect to the principles of conflicts of law. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried exclusively in the courts of the State of Tennessee located in Davidson County, Nashville, Tennessee. Each party hereby stipulates that the state courts located in Davidson County, Nashville, Tennessee shall have personal jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. To the fullest extent permitted by law, and as separately bargained-for-consideration, each party hereby waives any right to trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or relating to this Agreement.

## **9. Collections.**

If PracProg needs to engage an attorney or a collections agency to recover payments or expenses owed by You, You agree to pay all such costs and fees incurred by PracProg in attempting to collect such payments or expenses, including but not limited to, attorneys' or collections agency fees and expenses.

## **10. Force Majeure.**

PracProg shall not be liable for any failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, terrorism, civil unrest, flood, earthquake, or other cause beyond such party's reasonable control, including, but not limited to, any mechanical, electronic, Internet, telecommunications, or communications failure.

## **11. Severability.**

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

## **12. 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 You. 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 services.

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 shall be billed quarterly.

## **13. 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 any 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.

## **14. 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. If the request is not within the scope of an appropriate services agreement, PracProg will not complete the changes free of charge, even when the notifications are completed in the allowed 30 day time period,

## **15. Proposals and Estimates**

Your costs as provided or described in any document labeled or identified as a proposal or estimate are subject to change. In all cases we will make all reasonable attempts to keep costs lower than the ranges specified in the proposal. However, there are many things that can influence the final cost such as changes in a project's scope, changes in prices of purchased, "off the shelf" programs, excessive changes in site design, incomplete disclosure of Your existing processes or programs, and many others.

Version 3.2 transferred sections 12 through 14 from the hosting and email services agreement to this document. There are slight changes in the sales tax policy statement and some clarifications of the Appropriate Time for Requesting Work Revisions policy. Version 3.2 also adds the section for Proposals and Estimates, though that section should be obvious without a need to declare it.