

1. GENERAL

This Agreement explains the terms and conditions governing your use of the services made available to you by Tomahawk Technologies Inc., hereinafter called "Tomahawk" or "We". It represents the whole agreement and understanding between Tomahawk and the individual, corporation or organization who subscribes to the Service hereinafter called "Member" or "Members" or "You" or "you" or "consumer" or "customer". This document is referred to as the "Agreement". "Service" refers to any form of Internet/network integration provided by Tomahawk.

PLEASE READ THIS AGREEMENT CAREFULLY. By submitting your account application and by your use of the Service, you agree to comply with all of the terms and conditions set out in this Agreement. Tomahawk may terminate your account(s) at any time, without notice, for conduct that is in breach of this Agreement, or for conduct that Tomahawk believes is harmful to the business of Tomahawk or the use of the Service by others or is harmful to any other party.

Tomahawk reserves the right to modify this Agreement at any time, effective upon posting of the modified Agreement to this URL: <http://www.tomahawk.ca>. You are responsible to read this document from time to time to ensure that your use of the Service remains in compliance with this Agreement.

2. TERM AND PAYMENT FOR SERVICES

2.1 Notice of Termination

In the event that the consumer wishes to terminate their hosting package with Tomahawk, notice must be given 30 days in advance and any charges that would be incurred in before said 30 days are complete must be paid.

2.2 Default and Cure

In the event that either party hereto defaults in the performance of any of its material duties or obligations under this Agreement, including failure to make any payments due under this Agreement, and such default is not cured within five (5) days after written notice is given to the defaulting party specifying the default, then the party not in default, after given written notice thereof to the defaulting party, may terminate this Agreement.

2.3. Charges

You agree to pay for all charges attributable to your use of the Services at the then current Tomahawk prices, which shall be exclusive of any applicable taxes.

2.4. Chargeback's

If you ever feel that Tomahawk incorrectly charged your credit card you must contact billing for a correction. If you do contact your credit card company and issue a chargeback then you will be responsible for the \$50 chargeback fee. If you do not pay this fee then your account will be terminated.

2.5 Agreement of Payment

The Customer agrees to pay Tomahawk all charges relating to the use of his or her account(s) according to the rates and prices in the customers original agreement. The Customer is responsible for charges at the times the service is used and Tomahawk may apply the amount due to the Customer's credit card (or bank account) at any time. The Customer is solely responsible for informing Tomahawk of any changes regarding the current method of payment, including new expiry dates on his or her listed credit card.

2.6 Suspension and Reactivation

If an account is due for more than 30 days, the account may be suspended, and Tomahawk will charge an additional \$10.00 (ten dollars) reactivation charge. Suspended accounts will continue to accumulate charges while they are on hold.

2.7 Payment Methods

Tomahawk will accept payment made by personalized cheque, cash, VISA, or MasterCard. Service payments will be submitted in advance of receiving services.

2.8 NSF Cheques

Tomahawk will charge an additional \$20.00 (twenty dollars) for NSF cheques.

2.9 Non-refundable

All amounts paid to Tomahawk are non-refundable, and may only be transferred as credit for the Service.

2.10 Completion of Cancellation

All accounts must be paid in full before a cancellation will be considered complete.

3. USE OF SERVICES

3.1. Storage Usage

You agree that use of the Services under this Agreement will not exceed the storage usage limits set out. If you use any storage space in excess of the agreed upon number of megabytes, you agree to pay the associated additional charges. Data stored in your user account on a Tomahawk Server is not owned by Tomahawk; therefore Data preservation is the ultimate responsibility of you, the client. Tomahawk is in no way responsible for the client's data and or the backup of that data.

4. ENFORCEMENT

4.1. Investigation of Violations

Tomahawk may investigate any reported or suspected violation of this Agreement, its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, customers and/or third parties. Tomahawk will not access or review the contents of any e-mail or similar stored electronic communications except as required or permitted by applicable law or legal process.

4.2. Actions

Tomahawk reserves the right and has absolute discretion to restrict or remove from its servers any content that violates this Agreement or related policies or guidelines, or is otherwise objectionable or potentially infringing on any third party's rights or potentially in violation of any laws. If we become aware of any possible violation by you of this Agreement, any related policies or guidelines, third party rights or laws, Tomahawk may immediately take corrective action, including, but not limited to, (a) issuing warnings, (b) suspending or terminating the Service, (c) restricting or prohibiting any and all uses of content hosted on Tomahawk systems, and/or (d) disabling or removing any hypertext links to third party Web sites, any of your content distributed or made available for distribution via the Services, or other content not supplied by Tomahawk which, in Tomahawk's sole discretion, may violate or infringe any law or third-party rights or which otherwise exposes or potentially exposes Tomahawk to civil or criminal liability or public ridicule. It is Tomahawk policy to terminate repeat infringers. Tomahawk right to take corrective action, however, does not obligate us to

monitor or exert editorial control over the information made available for distribution via the Services. If Tomahawk takes corrective action due to such possible violation, Tomahawk shall not be obligated to refund to you any fees paid in advance of such corrective action.

4.3. Disclosure Rights

To comply with applicable laws and lawful governmental requests, to protect Tomahawk's systems and customers, or to ensure the integrity and operation of Tomahawk's business and systems, Tomahawk may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e., name, e-mail address, etc.), IP addressing and traffic information, usage history, and content residing on Tomahawk servers and systems. Tomahawk also reserves the right to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties.

5. INTELLECTUAL PROPERTY RIGHTS

5.1. Your License Grant to Tomahawk Hosting

You hereby grant to Tomahawk a non-exclusive, worldwide, and royalty-free license for the Initial Term and any Renewal Term to use your content as necessary for the purposes of rendering and operating the Services to you under this Agreement. You expressly (a) grant to Tomahawk a license to cache materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agree that such caching is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

5.2. Tomahawk Materials and Intellectual Property

All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Tomahawk or its suppliers or agents pursuant to this Agreement, and any know-how, methodologies, equipment, or processes used by Tomahawk to provide the Services to you, including, without limitation, all copyrights, trademarks, patents, trade secrets and other proprietary rights are and will remain the sole and exclusive property of Tomahawk or its suppliers, including but not limited to any software programs, inventions, products and/or technology innovations and methodologies utilized, developed, or disclosed by Tomahawk during the term of this Agreement. Unauthorized copying, reverse engineering, decompiling, and creating derivative works based on the any such software is expressly forbidden except as permitted in this Agreement. You may be held legally responsible for violation of any patent rights, copyright or trade secret rights that is caused or encouraged by failure to abide by the terms of this Agreement.

5.3. Trademarks

You hereby grant to Tomahawk a limited right to use your trademarks, if any, for the limited purpose of permitting Tomahawk to fulfill its duties under this Agreement. This is not a trademark license and no other rights relating to the trademarks are granted by this Agreement. Specifically, but without limitation, the rights granted by this Agreement do not include the right to sub-license use of your trademarks or to use your trademarks with any other products or services outside the scope of the Services provided under this Agreement. The limited trademark use rights granted under this section terminate upon termination of this Agreement.

6. WARRANTY; WARRANTY DISCLAIMER

6.1. Customer and/or Third Party Acts

Tomahawk is not responsible in any manner for any non-confirming Services to the extent caused by you or your customers. In addition, Tomahawk is not responsible for loss or corruption of data in transmission, or for failure to send or receive data due to events beyond Tomahawk reasonable control.

6.2. No Express or Implied Warranty

ALL SERVICES, SYSTEMS AND PRODUCTS PROVIDED BY TOMAHAWK UNDER THIS AGREEMENT ARE PROVIDED WITHOUT ANY EXPRESS OR IMPLIED WARRANTY IN FACT OR IN LAW, WHATSOEVER. YOU ACKNOWLEDGE AND AGREE THAT TOMAHAWK EXERCISES NO CONTROL OVER, AND ACCEPTS NO RESPONSIBILITY FOR, THE CONTENT OF THE INFORMATION PASSING THROUGH TOMAHAWK COMPUTERS, NETWORK HUBS AND POINTS OF PRESENCE, OR THE INTERNET. TOMAHAWK DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR COMPLETELY SECURE, AND DOES NOT MAKE ANY WARRANTIES WITH RESPECT TO PATENT, COPYRIGHT, TRADE SECRET OR TRADEMARK INFRINGEMENT. ALL SERVICES PERFORMED UNDER THIS AGREEMENT ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE DUE TO COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TOMAHAWK DOES NOT MAKE AND HEREBY DISCLAIMS, AND YOU HEREBY WAIVE ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONDITIONS OF QUALITY, AND ANY WARRANTIES WITH RESPECT TO PATENT, COPYRIGHT, TRADESECRET OR TRADEMARK INFRINGEMENT.

6.3 Your Warranties and Representations to Tomahawk

You warrant, represent, and covenant to Tomahawk that (a) you are at least eighteen (18) years of age or are a duly organized and validly existing entity; (b) you possess the legal right and ability to enter into this Agreement; (c) you will use the Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines; (d) you will be financially responsible for the use of your account; (e) you have acquired or will acquire all authorization(s) necessary for hypertext links to third-party Web sites or other content; (f) you have verified or will verify the accuracy of materials distributed or made available for distribution via the Services, including, without limitation, your content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted, and (g) your content and/or any software that you install or provide does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

7. LIMITATION AND EXCLUSION OF LIABILITY

7.1. Limitations

IN NO EVENT SHALL TOMAHAWK HAVE ANY LIABILITY WHATSOEVER FOR DAMAGE, UNAUTHORIZED ACCESS TO, ALTERATION, THEFT OR DESTRUCTION OF INFORMATION PROVIDED TO TOMAHAWK, DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES. TOMAHAWK SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF TOMAHAWK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF TOMAHAWK TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO TOMAHAWK BY YOU UNDER THIS AGREEMENT DURING THE THIRTY (30) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY TOMAHAWK UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU HEREBY RELEASE TOMAHAWK FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIM IN EXCESS OF THE LIMITATION STATED IN THIS SECTION 6.1. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES, OUR LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW.

7.2. Interruption of Service

You hereby acknowledge and agree that Tomahawk will not be liable for any temporary delay, outages or interruptions of the Services. Further, Tomahawk shall not be liable for any delay or failure to perform its obligations under this Agreement, where such delay or failure results from any act of God or other cause

beyond its reasonable control (including, without limitation, any mechanical, electronic, communications or third-party supplier failure).

7.3. Maintenance

You hereby acknowledge and agree that Tomahawk reserves the right to temporarily suspend services for the purposes of maintaining, repairing, or upgrading its systems and network. Tomahawk will use best efforts to notify you of pending maintenance however at no time is under any obligation to inform you of such maintenance.

8. INDEMNIFICATION

You will defend, indemnify and hold harmless Tomahawk and its officers, directors, shareholders, employees, consultants, agents, affiliates and suppliers (an "Indemnity") from any and all threatened or actual claims, demands, causes of action, suits, proceedings (formal or informal), losses, damages, fines, penalties, liabilities, costs and expenses of any nature, including attorneys' fees and court costs, sustained or incurred by or asserted against any Indemnity by any person, firm, corporation, governmental authority, partnership or other entity by reason of or arising out of or relating to: (i) your violation or breach of any term, condition, representation or warranty of this Agreement or any applicable policy or guideline; (ii) your conduct, including but not limited to your negligence, gross negligence, or willful misconduct; (iii) your use of the Services, including any improper or illegal uses; (iv) any claim by a former employee of yours whose employment has been or may be terminated in connection with or as a result of the execution of this Agreement and performance of the Services by Tomahawk; or (v) any claim relating to your services or products, or your installation and/or use of any third-party software, including but not limited to advertising, product liability claims or infringement of any trademark, copyright, patent, trade secrets or nonproprietary right of a third party (including, without limitation, defamation, libel, or violation of privacy or publicity).

9. MISCELLANEOUS

9.1 Confidentiality

The parties each agree that all Confidential Information (as defined below) communicated to it by the other is done so in confidence and will be used only for the purposes of this Agreement and will not be used to compete with the other party or disclosed to any third party without the prior written consent of the other party except as permitted under this Agreement. "Confidential Information" means all information in any form, including, without limitation, printed or verbal communications and information stored in printed, optical or electromagnetic format, which relates to the Services; or computer, data processing or electronic commerce programs and software; electronic data processing applications, routines, subroutines, techniques or systems; information which incorporates or is based upon proprietary information of either party; or information concerning business or financial affairs, product pricing, financial conditions or strategies, marketing, technical systems of either party; or any information concerning customers or vendors of either party; or any data exchange between a party and any customers or vendors. Exceptions to Confidential Information include (1) information in the public domain; (2) information developed independently by a party without reference to information disclosed under this Agreement; or (3) information received from a third party without restriction and/or breach of this or a similar Agreement. It is not a violation of this provision to disclose Confidential Information in compliance with any legal, accounting or regulatory requirement beyond the control of either Party or, but in such case, prior to disclosure, the disclosing Party shall give written notice to the other Party to permit that Party an opportunity to challenge such disclosure. If either Party is subpoenaed, such Party shall give written notice to the other Party to permit that Party an opportunity to challenge the disclosure of Confidential Information. Upon the termination of this Agreement and upon written request of the disclosing Party, each Party shall promptly return all Confidential Information of the other Party. This provision shall survive the termination of this Agreement for two (2) years.

9.2. Notices

All notices, reports, requests, or other communications given pursuant to this Agreement shall be made in writing, shall be delivered by hand delivery, overnight courier service, fax, or electronic mail, shall be deemed to have been duly given when delivered.

9.3. Choice of Law and Forum

THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF CANADA AND THE PROVINCE OF ONTARIO, WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS. ANY ACTION RELATING TO THIS AGREEMENT MUST BE BROUGHT IN THE FEDERAL OR PROVINCIAL COURTS LOCATED IN ONTARIO, AND YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF SUCH COURTS.

9.4. Entire Agreement

This Agreement and all policies and guidelines incorporated in this Agreement by reference constitutes the entire Agreement of the parties and may not be modified or altered orally but only by an agreement in writing signed by both parties.

9.5. No Fiduciary Relationship

No Third-Party Beneficiaries Tomahawk is not the agent, fiduciary, trustee or other representative of you. Nothing expressed or mentioned in or implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions and provisions hereof are intended to be and are for the sole and exclusive benefit of the parties hereto.

9.6. Assignments

You may not transfer or assign your rights, duties, or obligations under this Agreement without Tomahawk prior written consent. Tomahawk may assign its rights and obligations under this Agreement and may utilize affiliate and/or agents in performing its duties and exercising its rights under this Agreement, without your consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assignees.

9.7. No Waiver

Tomahawk failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of Tomahawk right to subsequently enforce such provision or any other provisions under this Agreement.

9.8. Severability

If any provision of this Agreement is deemed illegal, invalid, void or otherwise unenforceable in whole or in part, that provision shall be severed or shall be enforced only to the extent legally permitted, and the remainder of the provision and the Agreement shall remain in full force and effect. If any provision of this Agreement is deemed to be invalid, void or unenforceable only with respect to a particular application, such term or provision shall remain in full force and effect with respect to all other applications.

9.9. Survival

All provisions of this Agreement relating to your warranties, intellectual property rights, limitation and exclusion of liability, your indemnification obligations and payment obligations shall survive the termination or expiration of this Agreement.

9.10 Legal Fees

The Customer shall be responsible for all costs and expenses including reasonable legal fees and disbursements incurred by Tomahawk in connection with any legal or other proceedings where judgment is awarded in favor of Tomahawk.

9.11 Connection to Service

The Customer is responsible for any local or long distance phone charges accrued in connecting to Tomahawk's service. The Customer is also responsible for all equipment, including computer hardware and software, used in connecting to Tomahawk's service.

10. COMPANY RIGHTS

1. Tomahawk may deny to any Customer who does not provide accurate information.
2. Tomahawk may view, off load or delete data, limit, monitor, or terminate the Customer's Service at Tomahawk's discretion.
3. Tomahawk reserves the right to revoke access for any abusive conduct or fraudulent use of the Service.