

# e-Practice Marketing™

*"The Healthcare Industry's e-Marketing Partner"*

## **WEB HOSTING AGREEMENT**

This Hosting Agreement (this "Agreement") is made and entered into by and between e-Practice Marketing, a Wisconsin LLC with offices at 7208 ValleVue Drive, Greeley, CO, 80634 (the "Host"), and \_\_\_\_\_, a \_\_\_\_\_ corporation or company with offices at \_\_\_\_\_ ("Client") (each being referred to individually as a "Party" and collectively as the "Parties").

## **RECITALS**

- A. Host is in the business of offering Internet services relating to, among other things, hosting of sites on the World Wide Web portion of the Internet, and Host is willing to provide services to Client on the terms and subject to the conditions set forth below; and
- B. Client desires to engage Host, and Host desires to be engaged by Client, to provide Internet services on the terms and subject to the conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Host and Client hereby agree as follows:

## **TERMS**

This Agreement shall be effective when signed by both Parties (the "Effective Date") and thereafter shall remain in effect for one (1) year, unless earlier terminated as otherwise provided in this Agreement (the "Initial Term"). This Agreement shall automatically be renewed beyond the Initial Term for additional one (1) year terms (each a "Renewal Term") unless earlier terminated as otherwise provided in this Agreement.

## **Services.**

### **Hosting Services**

1. Host agrees to provide Client with services for hosting of a website on the World Wide Web portion of the Internet (the "Website") as set forth or described in SERVICES TO BE PROVIDED hereto (the "Hosting Services"). Host shall provide the Hosting Services so that the Website is accessible to third Parties via the World Wide Web portion of the Internet as specified in this Agreement.
2. Except as expressly provided in this Agreement, Client agrees that Host is responsible only for providing the Hosting Services, and Host is not responsible for providing any other services or tasks not specifically set forth in SERVICES TO BE PROVIDED.
3. To the extent that Client wishes to receive from Host, and Host wishes to provide to Client, services other than the Hosting Services (collectively the "Additional Services"), such Additional Services and the arrangements for their provision shall be set forth in a separate addendum to this Agreement which is duly executed by the Parties (the "Services Addendum"), and the Services Addendum shall be incorporated into, and become a part of this Agreement. (The Hosting Services and the Additional Services will hereinafter be referred to collectively as the "Services").

**Availability of Website**

Unless otherwise expressly indicated on SERVICES TO BE PROVIDED hereto, the Website shall be accessible to third Parties via the World Wide Web portion of the Internet twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Hosting Services due to causes beyond the control of Host or which are not reasonably foreseeable by Host, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures.

**Additional Storage and Transfer.**

In the event that the Website requires storage and transfer on the Host Server which exceeds the amount of storage included in the Hosting Services, Client may request that Host:

1. Upgrade the level of Hosting Services; or
2. Acquire additional incremental storage to be included in the Hosting Services, on a time and materials basis and in accordance with the fee and payment schedule in SERVICES TO BE PROVIDED. Host shall review all such requests and determine, in consultation with Client, whether it can reasonably comply with such requests, and if so, and at its option, Host shall propose a procedure and budget for complying with such request.

**Fees and Taxes.****Hosting Services Fees**

Client shall pay Host all fees for the Hosting Services in accordance with the applicable fee and payment schedule set forth in SERVICES TO BE PROVIDED. Host expressly reserves the right to change its rates charged hereunder for the Services during any Renewal Term (as defined herein).

**Additional Services Fees**

Unless otherwise agreed in writing, Client shall pay to Host all fees for Additional Services on a time and materials basis as invoiced by Host.

**Warranties.****Host Warranties**

Hosts represents and warrants that:

1. Host has the power and authority to enter into and perform its obligations under this Agreement; and
2. Host's services under this Agreement shall be performed in a workmanlike manner.

**Client Warranties**

Client represents and warrants that:

1. Client has the power and authority to enter into and perform its obligations under this Agreement;
2. Client Content does not and shall not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of a third Party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third Party right, and that Client owns the Client Content or otherwise has the right to place the Client Content on the Website;
3. Client's use of its Website will not violate any law or regulation of any governmental or regulatory/administrative entity; and,
4. Client has obtained any authorization(s) necessary for hypertext links from the Website to other third Party Websites. Should Client receive notice of a claim regarding the Website, Client shall promptly provide Host with written notice of such claim.

**Client Restrictions**

Client represents and warrants that it shall not use the Website or the Services provided to Client to:

1. Send unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material, who were not previous customers of CLIENT or with whom CLIENT does not have an existing business relationship ("E-mail spam");
2. Engage in harassing behavior, whether through language, frequency or size of email message;
3. Use without authorization or forge e-mail header information;
4. Solicit mail for any other e-mail address other than that of the Client's account with the intent to harass or to collect replies;
5. Create or forwarding "chain letters" or other "pyramid schemes" of any type; and/or,
6. Use unsolicited e-mail originating from within Host's network or the networks of other Internet Service Providers.

**Indemnification.****Client**

Client agrees to indemnify, defend, and hold harmless Host, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action is based upon a claim that:

1. If true, would constitute a breach of any of Client's representations, warranties, or agreements hereunder;
2. Arises out of the negligence or willful misconduct of Client; or,
3. Any of the Client Content to be provided by Client hereunder or other material on the Website infringes or violates any rights of third Parties; including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses.

**Host**

Host agrees to indemnify, defend, and hold harmless Client, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action arises out of the gross negligence or willful misconduct of Host.

**Notice**

In claiming any indemnification hereunder, the indemnified Party shall promptly provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing paragraphs. The indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified Party shall not be final without the indemnified Party's written consent, which shall not be unreasonably withheld.

**LIMITATION OF LIABILITY.**

HOST SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE WEBSITE OR CLIENT'S DATA FILES, PROGRAMS OR INFORMATION THROUGH ACCIDENT, FRAUDULENT OR UNAUTHORIZED MEANS OR DEVICES. HOST SHALL HAVE NO LIABILITY WITH RESPECT TO HOST'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF HOST TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO HOST BY CLIENT UNDER THIS AGREEMENT. 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.

**Amendment.**

No amendment, waiver, or modification of this Agreement or any provision of this Agreement shall be valid unless in writing, stating with specificity the particular amendment or modification to be made, and duly executed by the Host and Client.

**Enforceability.**

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, administrative agency or as a result of future legislative action, such holding or action shall be strictly construed and the unenforceable provision shall be deemed severable from the remainder of the Agreement to the extent permitted by law, and the validity or effect of any other provision of this Agreement shall remain binding with the same effect as though the void parts were deleted.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date set forth below.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CLIENT: \_\_\_\_\_

CLIENT: e-Marketing Partner

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: Owner

PRINT NAME: \_\_\_\_\_

NAME: Timothy Tomasovich or Bob Weber

**SERVICES TO BE PROVIDED**

Web Hosting Package Selected:

- o Comprehensive Practice Marketing Package – \$2,995.00
  - o Annual renewal fee – \$1,495.00
- o Basic Practice Builder Package – \$1,995.00
  - o Annual renewal fee – \$995.00

Cost of Selected Package is due immediately  
Cost of Selected Package renewal fee is due every 12 months.