

ShoutCMS Service Contracts

ShoutCMS Hosting Agreement

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Version 1.3

Document Owner

Patrick Binns

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Statement of Confidentiality

This document is the property of Evolution Inc. and contains information that is confidential and proprietary. The recipient of this document agrees to protect the information herein from loss, theft, and compromise. Disclosure of this information to third parties may cause damage to the interests of Evolution Inc.

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Parties to this Agreement

**Evolution Incorporated,
operating as “ShoutCMS” and “Mediashaker”**

Top Floor
10650 113th Street
Edmonton AB, T5H 3H6
www.ShoutCMS.com

herein referred to as “**Evolution Inc.**”

AND

organizations or individuals that are duly licensed by Evolution Inc.
to use ShoutCMS Services on a monthly basis.

herein referred to as “**Customer**”

Evolution Inc. and Customer agree that services will be provided by Evolution Inc. to Customer in accordance with the provisions of this hosting agreement (“**Hosting Agreement**”). This agreement references the ShoutCMS End User License Agreement (“**EULA**”) that describes additional licencing terms associated with the use of ShoutCMS Services by Customer, its employees, its agents, and its customers. Service levels associated with the provision of ShoutCMS Services are described in the ShoutCMS Service Catalogue.

Effective Date: This agreement is effective on Commencement Date and will continue until terminated as defined within this agreement.

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1 ShoutCMS Hosting Agreement

Evolution Inc. provides ShoutCMS (www.ShoutCMS.com), an internet-based software service that supports the creation, management, and rendering of an internet website associated to a URL (registered Uniform Registered Locator) (referred herein as “**ShoutCMS Services**”). Customer is entitled to use ShoutCMS Services according to the terms of this non-transferrable, non-exclusive hosting agreement. Evolution Inc. will support ShoutCMS Services according to this agreement and service levels defined in the ShoutCMS Service Catalogue.

1.1 ShoutCMS Authorized Reseller

Evolution Inc. authorizes companies or individuals to resell ShoutCMS licenses to Customer (“**ShoutCMS Reseller**”). Evolution Inc. does not warrant any advice or services provided by a ShoutCMS Reseller. The ShoutCMS Reseller shall have no claims to services provided through this agreement; this agreement is between Customer and Evolution Inc. only.

Customer may assign a ShoutCMS Reseller to be their Authorized Contact. In this situation, Evolution Inc. will respond to inquiries as if the Authorized Contact were an employee for Customer. Revoking assignment to a ShoutCMS Reseller will require formal consent from the owner of the internet domain name of the ShoutCMS website.

1.2 Authorized Contact

Each party will designate a contact consisting of name, mailing address, phone number, fax number, and email address to represent such party (“**Authorized Contact**”) and shall be responsible for directing performance of such party’s technical and contractual responsibilities for this Hosting Agreement.

All notices, demands or other communications including notices of address changes required or permitted to be sent hereunder shall be in writing, and sent either by email, personal delivery, overnight courier or facsimile transmission to Authorized Contact. Any notice, demand or communication delivered in person, through a formal request sent to the ShoutCMS Service Desk, or by overnight courier shall be deemed to have been received on the day of its delivery and, if sent by facsimile transmission, on the first business day following its transmission by facsimile.

Customer may assign one or more individuals to be an Authorized Contact; however, if there is disagreement between one or more Authorized Contacts, Evolution Inc. will seek clarification through written correspondence. If a dispute of authority is identified by Evolution Inc., the registered owner of the domain name for the web site will be contacted for final resolution. This process may delay the delivery of services provided by Evolution Inc. Delays of this nature are the responsibility of Customer.

1.3 Confidential Information

Evolution Inc. and Customer covenant to hold in confidence any information that either party receives in hardcopy and/or electronic form relating to the other party that is clearly identified and marked as confidential or proprietary including information of a confidential nature given orally, provided it is reduced to writing and marked as confidential within 10 days of disclosure.

“Confidential Information” does not include information which: (a) is or becomes part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and obtained from sources other than the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; (d) is independently developed by the other party; or (e) is disclosed by operation of law. Evolution Inc. and the Customer shall:

- i. Maintain the confidentiality of Confidential Information;
- ii. Not disclose or permit the disclosure of Confidential Information to any third party without first obtaining written permission from the other party;
- iii. Not make use of Confidential Information other than as contemplated by this Hosting Agreement or agreed to statement of work;
- iv. Comply with all reasonable rules or directions made or given by the other party with respect to safeguarding or ensuring the confidentiality of Confidential Information;
- v. Notify the other party immediately upon discovery of any unauthorized use or disclosure of Confidential Information, and cooperate with the other party in every reasonable way to assist in regaining possession of such Confidential Information and prevent its further unauthorized used or disclosure; and
- vi. Immediately return all originals, copies, reproductions and summaries in hard copy and/or electronic form of Confidential Information upon the termination of this Hosting Agreement, or upon the request of the other party, or, at the option and upon the request of the other party, certify destruction of the same.

Customer acknowledges and agrees that the logic, structure, sequence and organization of ShoutCMS Services are the valuable trade secrets of Evolution Inc. All information, data, drawings, specifications, documentation, software listings, source or object code relating to ShoutCMS Services which Evolution Inc. may have imparted and/or may from time to time impart to Customer is proprietary and confidential.

Customer agrees to hold such trade secrets and proprietary information in confidence and further agrees to use the same solely in accordance with the provisions of this agreement. This obligation shall survive the termination of this agreement.

1.3.1 Additional Remedies

Evolution Inc. and Customer agree that monetary damages may not be a sufficient remedy for the breach of any term of this agreement including, without limitation, the unauthorized use or disclosure of Confidential Information. Evolution Inc. and Customer shall be entitled, without waiving any other rights or remedies, to such injunctive or other relief as may be deemed proper through the arbitration process defined herein.

1.4 Authorizations Assigned by this Agreement

Evolution Inc. is authorized to make changes to ShoutCMS Services pursuant to this Hosting Agreement. All requests for support services, changes to configurations, or changes to access authority shall be initiated by an Authorized Contact. Evolution Inc. will modify permissions to access ShoutCMS Services on written request by Authorized Contact or under the terms of this agreement.

1.5 Duration of This Agreement

This agreement is in effect for the period coinciding with the payment of services and will renew automatically unless terminated as defined herein. Evolution Inc. reserves the right, in its sole discretion, to modify the terms of this agreement or make changes to services offered with these changes becoming effective on the next renewal period. Submission of payment for ShoutCMS Services shall constitute the continued acceptance of the terms of this agreement.

2 Payment for ShoutCMS Services

Customer agrees to pay fees for ShoutCMS Services as calculated at the rates and schedules published by Evolution Inc. at the initial effective date of this agreement and when this agreement is renewed. Unless otherwise stated, all references to dollar amounts in this Hosting Agreement and its attached schedules shall be in US dollars (USD) net of applicable taxes.

2.1 Variable Charged Services

Customer will be charged for bandwidth and disk space usage above the allowance defined in the chosen service package. Customer is responsible to monitor the amount of bandwidth of its account, on a daily basis. Evolution Inc. has no obligation to warn Customer regarding the excess bandwidth usage.

2.2 Commencement Date

ShoutCMS Services, and the terms of this agreement shall start on the activation of ShoutCMS on Customer's URL. Customer recognizes that temporary hosting of ShoutCMS Services on an interim URL (e.g. "<sitename>.ShoutCMS.net") that is restricted to site construction and testing purposes. Use of ShoutCMS Services for business purposes is not permitted when hosted on an interim URL.

2.3 Invoicing and Payment Terms

Service payments are charged in advance of receiving services. Customer will indicate its preferred renewal period (monthly or semi-annually) and method of payment when ShoutCMS Services are initiated. Payment method may be changed through a written request to Evolution Inc. If payment is by credit card, Evolution Inc. will debit the card automatically on the renewal date of this agreement; otherwise, Customer will be invoiced by email to the Authorized Contact 28 days in advance of the renewal date. Customer is responsible to notify Evolution Inc. of any changes to the declared billing email account.

Incidental costs associated with the ShoutCMS website, but not included in this hosting agreement (including but not limited to SSL certificates and URL renewals, configuration requests, training, design services, will be charged to Customer monthly on a separate consolidated invoice.

Evolution Inc. will support reasonable administrative requests made by Customer; including provision of information supporting time-and-materials services. Customer agrees to pay late-payment charges calculated at 1.5% per month (19.02% per annum) on all past due amounts. A CAD\$45.00 service fee will be charged for each NSF cheque.

Customer agrees to pay all duties and taxes (including provincial sales taxes and federal goods and services taxes as well as any applicable U.S. state or U.S. federal taxes or duties) arising out of or in connection with the Services and/or Deliverables. It is the Customer's responsibility to provide any tax exemption numbers to Evolution Inc. prior to invoicing.

2.4 Renewal Period

Any changes to the terms of this hosting agreement will be introduced automatically when Customer renews this agreement by making payments for services after the effective date of changes to this agreement. Pre-paid hosting services will not be affected until the end of pre-paid period.

2.5 Customer Request to Terminate Services

Customer may terminate this Hosting Agreement by providing Evolution Inc. written notice to the address above **15** days prior to the renewal of their hosting term. The agreement will terminate at the end of the pre-paid term. Customer waives all refunds for pre-paid services when terminating this agreement.

2.6 Termination Due to Non-payment

In the event of non-payment by Customer, for any accounts with outstanding amounts **30** or more days past-due, Evolution Inc. may suspend some or all ShoutCMS Services provided to Customer. The following schedule of actions may be undertaken by Evolution Inc.:

1. **1** day past due: An interest charge of **1.5%** of the past-due amount will be applied to Customer's account. Interest charges will be accrued on a monthly basis.
2. **30** days past due: Customer access to the ShoutCMS Administration Console may be suspended. All service requests by Customer to Evolution Inc. must be pre-paid. Any related pre-paid credits will be applied to outstanding amounts.
3. **60** days past due: Customer access to the ShoutCMS Administration Console will be suspended. Email services will be suspended. Customer will not have access to Contact, Web-form, or Store functions. A "Website not available" notice will be displayed when the URL is accessed from the Internet.
4. **90** days past due: All website content including pages, contacts, forms, and invoices will be removed from Evolution Inc. servers (deleted). Evolution does not warrant the restoration of services once removed from its servers. This agreement is formally terminated.
5. Evolution will contact a collection agency to recover unpaid monies owed.

The restoration of suspended services is the responsibility of Customer and will be charged on an hourly rate. ***Evolution does not warrant the restoration of ShoutCMS Services once removed from its servers.***

2.7 Termination Due to Bankruptcy

Evolution Inc. may terminate this Hosting Agreement: (i) if any proceeding in bankruptcy, receivership, liquidation or insolvency is commenced against Customer and the same is not dismissed within 30 days; (ii) if Customer makes an assignment for the benefit of creditors, becomes insolvent, commits any act of bankruptcy, ceases to do business as a going concern, or seeks any arrangement or compromise with its creditors; or (iii) if Customer breaches any material provision of any statement of work or this Hosting Agreement and fails to remedy such breach or provide a plan acceptable to Evolution Inc. to cure such breach within **14** days after notice of the breach.

2.8 Termination Due to Breach of Terms

In the event that Customer, or its employees or agents, fail to adhere to the terms of this hosting agreement, Evolution Inc., at its discretion, may immediately suspend some or all ShoutCMS Services, including internet access to website and email services hosted on behalf of Customer. ShoutCMS Services will be restored only when Customer and its employees or agents adhere to the terms of use outlined in this agreement. (This clause protects public interests against publication of inappropriate content, disclosure of private information, and disclosure of financial information).

2.9 Content Deletion on Termination

On termination of this hosting agreement, Evolution Inc. will remove all content associated with Customer's account from its servers. This content may include hosted email data and accounts, web page content, images, photos, attached documents, contact information, online invoices, product and pricing information, and form data.

Prior to removal of Customer data, Customer may engage Evolution Inc. under a separate agreement to provide a data archive (DVD) for use by Customer. Customer recognizes that this data archive may not retain referential relationships within the data. Evolution Inc. assumes no responsibility associated with the ability to reconstruct a website from the provided data archive.

Customer acknowledges that they are responsible for updates or removal of any content not hosted on Evolution Inc. Servers. This data includes but is not limited to Google, YouTube, Facebook, Twitter, and other accounts managed by Customer.

3 Use of ShoutCMS Services

Customer agrees to use ShoutCMS Services as permitted by applicable local, provincial, state, and federal laws. Customer agrees, therefore, not to use these services to conduct any business or activity or solicit the performance of any activity that is prohibited by law, libellous, or against the terms of this Hosting Agreement. Customer is solely responsible for any legal liability resulting from the use of their website.

Customer represents and warrants to Evolution Inc. that any material to which the public can link through, or any products or services made available to the public through their website, will not violate or contain any materials that are: unlawful, harmful, fraudulent, libellous, slanderous, threatening, misrepresentative, abusive, harassing, defamatory, vulgar, obscene, profane, hateful, racial, disputatious, argumentative, or otherwise objectionable, including, without limitation, any material that

encourages conduct that would constitute a criminal offense, gives rise to civil liability, or otherwise violates any applicable local, provincial, state, national or international law.

Customer represents and warrants to Evolution Inc. that it holds the necessary rights to permit the use of any of the items on their website, and, that the use, reproduction, distribution, transmission or display of any data to the public, and any material to which the public can link through, or any products or services made available to the public through their website, will not violate or potentially violate any criminal laws or any rights of any third parties, including, but not limited to infringement or misappropriation of any copyright, patent, trademark, trade secret, other proprietary or property right.

3.1 Password Management

Customer agrees to maintain secure passwords to access ShoutCMS Services. Secure passwords are those that are at least 8 characters in length and contain upper and lowercase letters and numbers or other characters. Customer is solely responsible for controlling distribution and maintaining passwords to assure secure access to ShoutCMS Services. Customer will notify Evolution Inc. immediately if a secure password has been compromised. **Authorized Contacts are responsible for configuring, tracking, and assigning, revoking, and changing passwords used to secure ShoutCMS Services.**

3.2 Use of Materials

ShoutCMS Services can be used by Customer and the general public to upload or download materials in the public domain (e.g. images, text, and programs). Customer assumes all risks regarding the determination of whether the material is in the public domain.

ShoutCMS materials, including programs, data, structures, java script, and other resources used to provide ShoutCMS services shall not be analyzed, decompiled, or reverse engineered by Customer or any third party assigned by Customer.

As provided by Canadian federal law, United States federal law, and by International law, copyrighted materials (including but not limited to images, text, and programs) may not be copied or published by Customer using Evolution Inc. services without the permission of the copyright holder. Copyrighted materials, if allowed, may be downloaded for personal use. Except as expressly permitted, materials under copyright may not be distributed to others. Copyrighted material may not be changed nor can the author attribution notices or the copyright notices be modified.

3.3 Impact to Search Engine Ranking

Search engine ranking of Customer website is performed by external parties and is not controlled by ShoutCMS Services. Evolution Inc. assumes no responsibility for changes to search engine rankings as a result of changes to Customer website content and/or changes to the ShoutCMS Hosting Environment.

3.4 Conformance to Privacy Legislation

Customer shall undertake responsible and transparent personal information management practices in a manner consistent with the provisions of the Personal Information Protection Act (Alberta) and/or other jurisdictions where it conducts business (the Personal Information Protection and Electronic Documents Act (Canada)). Evolution Inc. shall not be held responsible for breaches of privacy by Customer.

3.5 Operations of the ShoutCMS Online Store

ShoutCMS Services optionally include an online store capable of listing and selling items through eCommerce (“**Store**”). Store is a secure service that is supported by one or more payment methods including PayPal, Visa, COD, and cheque (“**Merchant Account**”). Customer recognizes that operating Store involves management of confidential information and processes are subject to PCI regulations for online commerce transactions.

It is incumbent on Customer to conduct commercial operations of an online store in a secure manner. Damage to the business of Customer is not limited to equipment damage. Theft or loss of data due to a security breach is not the responsibility of Evolution Inc.

Customer is entitled to operate one business per license of ShoutCMS Services. Customer may not extend Store services to other parties (e.g. act as an online agent for a third party).

3.5.1 Merchant accounts

It is incumbent on Customer to arrange for merchant accounts for the purpose of financial transactions with users of Store. Evolution Inc. shall not be responsible for the security of these transactions or protection of financial information generated by use of these merchant accounts.

3.5.2 Business interruption

Evolution Inc. is not responsible for any costs or lost opportunities associated with the interruption of Store availability. Customer is responsible to notify Evolution Inc. of interruptions when they occur. Servicing of third party software or incompatible business practices arising from use of Merchant Accounts in conjunction with Store shall be the responsibility of the Customer.

3.5.3 Fraud

The Customer shall be responsible for all commercial activities undertaken through the online store. Evolution Inc. shall in no way be responsible for unfulfilled commercial or other agreements transacted through Store.

3.5.4 Service Delivery

Customer is wholly responsible for the delivery of all products and services sold through Store. Customer recognizes that Evolution Inc. has no responsibility associated with the delivery of products and services advertised or sold on Store.

3.6 Abuse of ShoutCMS Services

EVOLUTION ASSUMES NO LIABILITY OR RESPONSIBILITY TO ANY PERSON OR PARTY FOR ANY VIOLATION OF THIS HOSTING AGREEMENT BY ANY OTHER PERSON OR PARTY. IT IS THE POLICY OF DANAMI, BUT NOT ITS OBLIGATION, TO MONITOR ITS NETWORK FOR POTENTIAL, ALLEGED, OR ACTUAL VIOLATIONS OF THIS AUP AND TO CANCEL EGREGIOUS OR REPEAT OFFENDERS OF THIS AUP WITHOUT PRIOR NOTICE.

Any use of ShoutCMS Services by Customer that disrupts the normal use of Evolution Inc.'s server and production environment is considered to be abuse of ShoutCMS Services. Evolution Inc. reserves the right to restrict access to ShoutCMS Services provided to Customer until corrective actions are implemented. Examples of system abuse include, but are not limited to:

- Spam to solicit an advance fee in return for monetary gain.
- Hosting, distributing, or linking from a site to pornography involving a person under legal age.
- Sending email containing or linking to pornography involving a person under legal age.
- Hosting, distributing, or linking to copyright infringed materials.
- Brute force access of secured network devices.
- Denial of service attack of network devices.
- Faking an IP address, hostname, e-mail address, or header.
- Hosting or linking to a website intended to deceive the public.
- Circumventing security systems of network devices.
- Hosting or linking to a website of high yield investment program, Ponzi Scheme, or Pyramid Scheme.
- Hosting, Distributing, or Linking to Stolen Account Identification Information.
- Hosting, Distributing, or Linking to Exploits, Trojans, Viruses, or Worms.
- A vain, obscene, or malicious host name or domain name.
- Identity theft by email under false pretense.
- Use of a third party proxy vulnerability or trojan.
- Probing for vulnerabilities of network devices.

- Sending high volume spam.
- Unsolicited bulk email.
- Hosting, distributing, or Linking to Email Address Lists for Spam.
- Posting the same message repeatedly in any newsgroup or to multiple newsgroups or posting an off-topic message to a newsgroup.
- Hosting or Linking to a Site Advocating Terrorism.
- (See <http://www.treas.gov/offices/enforcement/ofac/programs/terror/terror.pdf>)
- Hosting, Distributing, or Linking to Cracking, DoS, Forgery, Infection, or Scanning Software or Instruction.
- Hosting, Distributing, or Linking to Trade Mark Infringed Materials.
- Use of a Web Spider, Crawler, or Bot for Unauthorized Connection to 3rd Party Web Servers.

Unethical and criminal activities involving ShoutCMS Services are considered to be abuse. Customer is required to report to Evolution Inc. any information it may have concerning instances in which ShoutCMS Services have been used outside the terms of this agreement.

Evolution Inc. will notify Customer if it is aware of possible abuse of ShoutCMS Services. Evolution Inc. will initiate an investigation to determine the root-cause and initiate corrective actions.

In order to prevent possible unauthorized activity, Evolution Inc. may temporarily suspend ShoutCMS Services while investigating the source and impact of unauthorized use. Confirmation of violations may result in cancellation of ShoutCMS Services and the initiation of criminal prosecution.

Violations of our terms of use should be reported to abuse@ShoutCMS.com

4 Provisioning ShoutCMS Services

Evolution Inc. provides ShoutCMS Services through its hosting infrastructure. ShoutCMS Services are provisioned on Evolution Inc. computer systems in a shared server environment within a secure data centre located in Alberta Canada. Data centre services include but are not limited to premise security, secondary power, and alternative internet connectivity. ShoutCMS Services rely on computer servers, 3rd party software, internet connectivity, and support services provided by Evolution Inc.

A detailed description of ShoutCMS Services provided by Evolution Inc. is described in the ShoutCMS Service Catalogue (available on request).

4.1 Third Party Services

Evolution Inc. may, on request by Customer, act on behalf of Customer to secure and/or renew third party services including SSL Certificates, domain name registrations, and network connectivity. Customer acknowledges Evolution Inc.'s position as registrant and agrees to abide by the terms of use of

these external services. Upon registering a domain name for Customer, Customer will be subject to the Terms and Conditions of InterNIC and other registries as applicable.

4.2 Scheduled Outages

Evolution Inc., as part of its hosting services, periodically makes changes to software, data, and equipment used to provide ShoutCMS Services (“**Scheduled Outages**”). Evolution Inc. reserves the right to schedule periodic maintenance outages in order to update equipment and software.

4.3 Unscheduled Outages

In some circumstances, the stability or availability of ShoutCMS Services may be compromised due to network infrastructure, human error, or technical risk (“**Unscheduled Outages**”). Customer acknowledges that in these situations Evolution Inc. may disable all or parts of ShoutCMS services in order to restore stable operations.

4.4 Work on Customer Premises

Where any services are to be performed at the Customer’s premises, Customer shall, subject to Customer’s reasonable security requirements, allow Evolution Inc. personnel access to the area(s) where the services are to be performed and will provide adequate office accommodation and facilities for any Evolution Inc. personnel working on its premises.

Customer will provide Evolution Inc., with all necessary cooperation, information, equipment, data and support that may be reasonably required by Evolution Inc. for the performance of its obligations under a statement of work, including access to suitably configured computer products at such times as mutually agreed to by Evolution Inc. and Customer.

4.4.1 Access to Customer Data

During the regular operations of ShoutCMS Services, Evolution Inc. may have access to data held on behalf of Customer. Access to this data is restricted to the purposes of operating ShoutCMS Services. All data belonging to Customer is classified as Confidential and is managed following Evolution Inc.’s processes to manage confidential information.

5 Ownership

Ownership of any deliverable or work product provided by Evolution Inc. to Customer pursuant to any services shall be as stipulated in a statement of work. Notwithstanding any provision of any statement of work to the contrary, Development Tools (as hereinafter defined) shall be and shall remain the sole property of Evolution Inc., and Customer shall have no interest therein or claim thereto. In addition, again notwithstanding any provision of any statement of work to the contrary, Evolution Inc. shall be free to use any ideas, concepts, processes or know-how conceived, developed, created, generated, produced or reduced to practice by Evolution Inc. or its personnel, alone or jointly with others, during the performance of the services associated with this agreement. For purposes of this agreement, “Development Tools” means any technical designs, software routines, software libraries, software utilities, methodologies, templates, processes or technologies created, adapted or used by Evolution Inc. in its business generally or in relation to the performance of the Services, including all associated intellectual property rights of any nature whatsoever.

5.1 Customer Materials

Customer retains ownership of materials created by Customer. Customer is responsible for distribution of its materials including copying and publishing materials through a ShoutCMS website. Customer is responsible for managing copyright and confidentiality restrictions of third party content it copies to and publishes on a ShoutCMS website. Customer recognizes that materials copied to a ShoutCMS website can be accessed, viewed, and downloaded through internet browsing and file copying; and that ShoutCMS content by default is available to the public.

Customer may not claim damages associated with the distribution of Customer content placed in the ShoutCMS Hosting Environment.

5.2 License to Use ShoutCMS Services

ShoutCMS Services are provided by Evolution Inc. through a license for use only. Ownership of all assets, copyrights, and moral rights remain in the control of Evolution Inc. Customer is not entitled to any ownership rights through this agreement to license ShoutCMS Services.

5.3 IP Addresses

Evolution Inc. maintains control and ownership of any and all IP numbers and IP addresses that may be assigned to Customer. Evolution reserves in its sole discretion the right to change or remove any and all IP numbers and addresses. Customer will have no right to use an assigned IP numbers except as allowed by Evolution Inc. in its sole discretion in connection with this agreement.

6 Limitation of Liability

Customer acknowledges that information available through interconnected networks may not be accurate. Evolution Inc. has no ability or authority over interconnected networks and makes no warranty of any kind, either expressed or implied, regarding the quality, accuracy, or validity of the data and/or information residing on or passing through these networks. Use of information obtained from or through Evolution Inc. services is at the risk of Customer.

Customer acknowledges and agrees that the fees payable by it to Evolution Inc. pursuant to this Hosting Agreement and any statement of work have been or will be negotiated based upon a specific risk allocation between Evolution Inc. and the Customer, and that Evolution Inc. would not have entered into this Hosting Agreement and will not enter into any statement of work but for the specific understanding reached with Customer as to certain risks as set forth in this section.

6.1 No Liability for Indirect Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT AND UNDER NO LEGAL THEORY SHALL EVOLUTION INC. BE LIABLE TO CUSTOMER FOR ANY BUSINESS LOSS, REVENUES DECREASE, LOSS OF GOODWILL, EXPENSES INCREASE, COSTS OF SUBSTITUTE PRODUCTS/SERVICES, OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF THE USE OF, OR INABILITY TO USE, ANY OF EVOLUTION INC.'S SERVICES, EVEN IF EVOLUTION INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EVOLUTION INC.'S LIABILITY EXCEED THE MONTHLY FEE PAID BY CUSTOMER. THIS LIMITATION OF LIABILITY AND RISKS IS REFLECTED IN THE PRICE OF EVOLUTION INC.'S SERVICES.

6.2 Limited Liability for Direct Damages

Regardless of circumstances, the cumulative liability of Evolution Inc. for direct losses or damages arising out of or resulting from this Hosting Agreement or any statement of work, any use of or inability to use the services and/or any deliverable or otherwise, shall in no event exceed the fees paid for any deficient services or deliverables under the relevant statement of work.

Evolution Inc. makes no warranty of any kind, either expressed or implied, regarding the quality, accuracy, reliability, or validity for ShoutCMS Services. Evolution Inc. specifically disclaims all warranties of merchantability and fitness for a particular purpose. The use of ShoutCMS Services, provided by Evolution Inc., is at the risk of Customer.

Customer understands, agrees and acknowledges that Evolution Inc. will use its best efforts to maintain a fulltime Internet presence for Customer. ShoutCMS Services may be unavailable due to, but not limited to, utility interruption, equipment failure, natural disaster, acts of God, or human error.

Customer agrees that these events may or may not occur and Customer will hold Evolution Inc., its subsidiaries, affiliates, executives, directors, officers, managers, employees, successors, and agents, free and harmless from any damages incurred in any event of any type of loss resulting from any reason whatsoever. Use of Evolution Inc. service is at the risk of Customer.

6.3 Indemnification

Customer agrees to indemnify and to hold Evolution Inc., and any third party entities related to Evolution Inc., harmless from and against any and all liability, loss, damages, claims, or causes of action, including reasonable legal fees and expenses arising out of or related to Customer's breach of any of the foregoing representations and warranties, or any other third party claim with respect thereto.

7 Warranty

Evolution Inc. warrants for a period of 30 days from commencement of ShoutCMS Services that ShoutCMS Services will be performed consistent with generally accepted industry standards. This warranty shall be conclusively deemed to be satisfied unless Customer notifies Evolution Inc. in writing of any warranty-related deficiencies within the said period.

The above warranty is exclusive and in lieu of all other warranties or conditions, whether express or implied, statutory or otherwise, including the implied warranties or conditions of merchantable quality, merchantability and fitness for a particular purpose. Should Evolution Inc. be in breach of this warranty, Customer's exclusive remedy and Evolution Inc.'s entire liability shall be the re-performance of the services. If Evolution Inc. is unable to perform the services or provide the deliverables as warranted, Customer shall be entitled to recover the fees paid for the deficient services or deliverables under the relevant statement of work.

8 Miscellaneous Provisions

- a) Neither this Hosting Agreement nor any statement of work issued pursuant hereto may be assigned by Customer without the prior express written consent of Evolution Inc.
- b) This Hosting Agreement neither constitutes either party as the agent or legal representative of the other nor creates a partnership or joint venture under any statement of work. Evolution Inc. shall provide ShoutCMS Services and deliverables as an independent contractor.
- c) No term or provision of this Hosting Agreement or a signed statement of work shall be deemed waived by either party, and no breach excused by either party, unless the waiver or consent shall be in writing signed by the party granting such waiver or consent. If any provision of a

statement of work or this Hosting Agreement is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect.

- d) Nothing in this Hosting Agreement shall give either party the right to use the trademark(s) of the other party without that party's prior written consent.
- e) Time shall be of the essence.
- f) Either in whole or in part, without the prior consent of Customer, Evolution Inc. may assign its rights and obligations under this Agreement to a third party in connection with a merger, consolidation, or sale of all or substantially all of Evolution Inc.'s assets or other corporate reorganization.
- g) Any agreement, arising from the business relationships between Evolution Inc. and Customer, will be governed by and construed in accordance with the laws of the Province of Alberta, Canada, without reference to its conflicts of laws principles. Customer agrees that any litigation or arbitration between the parties will take place in Alberta, Canada, and consents to personal jurisdiction and venue in that Province.

8.1 Arbitration

If any dispute arises out of or in connection with this Hosting Agreement, including any question regarding its existence, validity, breach or termination, Customer and Evolution Inc. will negotiate in good faith to resolve the dispute. If the parties are unable to resolve the dispute, the dispute shall be referred to and finally resolved by arbitration, subject to the provisions of this Hosting Agreement.

The party wishing to initiate arbitration may, by notice to the other party, refer the matter in dispute to arbitration. Such notice shall set forth a brief description of the matter to be submitted for arbitration. The parties shall, within twenty one (21) days after receiving such notice, negotiate in good faith to select and agree upon an arbitrator. If the parties are unable to agree on the selection of an arbitrator within the said 21 days, the parties or either one of them may apply to the Court of Queen's Bench of Alberta to have the arbitrator appointed. The arbitration shall take place at the City of Edmonton, Alberta and the provisions of the Arbitration Act, Alberta, shall apply. The language of the arbitration shall be English. Within thirty (30) days of selection of the arbitrator, each party to the arbitration shall submit to the arbitrator and to the other party, a statement of facts upon which such party relies, together with such supporting documentation or evidence as may be reasonably expected to enable the arbitrator to understand the issue in dispute from the perspective of such party. Within sixty (60) days of its selection, the arbitrator shall convene a hearing to determine the issues. Both parties shall be entitled to be represented by counsel at such hearing. The costs of the arbitration shall be borne by the parties in the manner specified by the arbitrator.

Except as provided in this Hosting Agreement, and for the purpose of enforcing any award by an arbitrator appointed pursuant to this Hosting Agreement, neither party shall commence, carry on or maintain any action in any court of law in any jurisdiction with respect to any matter of the nature hereby agreed to be submitted to mediation and arbitration.

Excluded from the requirement to arbitrate under this hosting Agreement will be any lawsuits involving third parties, intellectual property claims whether initiated by third parties or by the parties to this Hosting Agreement.

9 Schedule 1: Assignment of Authorized Contact

([Sample assignment request form](#))

Organization: <org name>

Domain Name: '<site>.com'

Date: <date of assignment>

I _____, representative of organization _____

On this ____ day of _____, 20 __,

appoint the following individual(s) to be Authorized Contacts as per the terms of the ShoutCMS Hosting Agreement. Any previously assigned Authorized Contacts not listed below shall be removed as Authorized Contacts by Evolution Inc.:

Name:
Title:
Email:
Phone #:

Name:
Title:
Email:
Phone #:

As an Authorized Contact, any one of the above individuals may instruct Evolution Inc. to direct changes to ShoutCMS Services accessed through the (Domain Name) http://www_____ as per the terms of the ShoutCMS Hosting Agreement.

In the event of a disagreement between two or more Customer Authorized Contacts, Evolution Inc. will follow only instructions provided by the *domain name owner* of the hosted website.

Signed:

ShoutCMS Authorized Contact
Or Domain Name Owner