

## **WebStack Service Agreement**

### **1.0 Overview**

1.1 This WebStack Service Level Agreement (“SLA”) is by and between WebStack Corporation (“WebStack”), having its principal place of business at 179 Rodeo Ln., Cuba, MO 65453 and you (“You” or “Subscriber”).

1.2 “E-Commerce-in-the-Cloud” means and is expressly limited to an e-commerce capability for selling goods and services over the Internet that is built upon DealerStack for members of the U.S. business community.

1.3 “DealerStack” means and is expressly limited to the combination of e-commerce software, data center network and infrastructure, and managed services set forth in this SLA. WebStack may subcontract all or part of DealerStack to third parties, provided that WebStack remains liable to Subscriber for the proper performance of such subcontracted work in accordance with the terms of this SLA.

1.4 DealerStack, owned and operated by WebStack, is provided to you under the terms of this SLA, and any amendments thereto. WebStack reserves the right, in its sole discretion, to alter, add to, or remove any of the SLA at any time. Subscriber will receive notice of such change and/or modifications pursuant to Section 11.7 regarding notices.

1.5 By accepting the terms and conditions of the SLA, Subscriber (a) confirms that Subscriber is a member of the U.S. business community, (b) agrees to provide accurate, current and complete information about Subscriber as requested by the account registration form, and (c) agrees to keep it current. Failure to abide by the terms of this paragraph gives WebStack the right to terminate Subscriber’s account and refuse any and all current or future use of DealerStack.

1.6 BY COMPLETING, SIGNING, AND SUBMITTING THE DEALERSTACK SIGN-UP FORM, YOU AGREE TO BE BOUND BY THIS SLA. If these terms or conditions or any future changes become unacceptable to you, you may cancel your account in accordance with Section 5.

### **2.0 Property, Licensing and Copyrights**

2.1 WebStack shall provide Subscriber and its customers access to Subscribers’s E-Commerce-in-the-Cloud site on the DealerStack infrastructure, provided that such right to access shall be limited to operating Subscriber’s E-Commerce-in-the-Cloud site and conducting e-commerce activity.

2.2 Subscriber acknowledges that it has no right to copy or use the DealerStack software beyond the purposes expressly provided for in this SLA.

2.3 Subscriber acknowledges that it has no right to any copyrighted materials used in creating the E-

Commerce-in-the-Cloud site or to the look and feel of the Subscriber's E-Commerce-in-the-Cloud site beyond those materials previously copyrighted by the Subscriber and expressly provided to WebStack for use in branding the site.

2.4 Subscriber agrees that by using DealerStack, it grants WebStack a non-exclusive, world-wide, royalty-free perpetual license to use, distribute, display and reproduce such materials as make up the Subscriber's E-Commerce-in-the-Cloud site and to maintain such materials on the DealerStack servers and to authorize the downloading and printing of such materials by endusers for their personal use.

### **3.0 Subscriber's Obligations**

3.1 Subscriber shall designate one individual ("Point of Contact") as its representative, who shall readily be available to WebStack to coordinate activities hereunder. Subscriber shall provide WebStack with business hour and non-business hour contacts.

3.2 Subscriber acknowledges and agrees that it shall be responsible for all goods and services sold through its e-commerce site. Subscriber represents that it HAS the full power, license and authority under relevant laws and regulations to:

- Sell the goods and services offered at its e-commerce site
- Use the copyright materials and product content present on its e-commerce site
- Accept credit card payment and delivery for goods and services as represented on its e-commerce site

3.3 Subscriber also agrees that it is responsible for all acts or omissions that occur on the e-commerce site or in connection with the Subscriber's account or password.

3.4 Subscriber agrees to present and maintain current business location and contact information on its e-commerce site, including Subscriber's name, physical address, telephone, fax, and e-mail.

3.5 Subscriber shall also be responsible for all other site materials and content for which it has the access and tools to maintain.

3.6 Subscriber agrees NOT TO ENGAGE in any activity:

- That is a violation of any law or regulation
- That defames, impersonates or invades the privacy of any third party
- That infringes the rights of any third party, including (but not limited to) their intellectual property, business, contractual or fiduciary rights
- That is considered to be an unethical business practice

WebStack reserves the right to refuse to host or continue hosting any Subscriber's E-Commerce-in-the-Cloud site which it believes, in its sole discretion:

- Offers for sale goods or services, or uses or displays materials, that are illegal, obscene, offensive, dangerous, or otherwise inappropriate to the goals of the manufacturer's sales channel network
- Has generated too many complaints from users on the quality or content of the goods, services or content of the E-Commerce-in-the-Cloud site.
- Has become the subject of a government complaint or investigation
- Violates this SLA

3.7 Subscriber agrees not to attempt to gain unauthorized access to any servers controlled by WebStack.

#### **4.0 WebStack Obligations**

4.1 WebStack will setup a branded E-Commerce-in-the-Cloud site for Subscriber, based upon the information provided in the Sign-Up Form and other information obtained from the Subscriber's Point of Contact.

4.2 WebStack will set up E-Commerce-in-the-Cloud sites for Subscribers in the order in which they register. However, WebStack does not guarantee the setup time. WebStack will notify the Subscriber's Point of Contact by telephone when the site is operational.

4.3 WebStack will provide Internet access to the Subscriber's E-Commerce-in-the-Cloud site 7 x 24 x 365, except for scheduled and unscheduled maintenance. However, Subscriber acknowledges that the E-Commerce-in-the-Cloud is not "mission critical" and is offered "AS IS" and "AS AVAILABLE."

4.4 WebStack will provide technical support to Subscriber and their customers for problems associated with Subscriber's E-Commerce-in-the-Cloud site. Assistance may be requested by e-mailing **service@webstack.com** or calling the help desk at **(573) 885-0771**. Subscriber acknowledges that WebStack will not be able to provide assistance to Subscriber's customers on matters related to the Subscriber's business.

4.5 WebStack will provide IT service management to all Subscribers on the DealerStack infrastructure, including: data storage, backup, recovery, and security.

4.6 WebStack may and will revise or upgrade the DealerStack software and infrastructure as it deems, in its sole discretion. If any revision or upgrade materially affects Subscriber's ability to conduct business, Subscriber's sole remedy is to terminate the SLA pursuant to Section 5.

#### **5.0 Terms and Termination**

5.1 The initial term of this SLA is three months, commencing on the first day of the month after WebStack notifies Subscriber that its site is operational ("Effective Date"). Thereafter, it automatically renews for successive one-month terms unless terminated by either WebStack or Subscriber. Either party may, at its sole discretion, elect not to renew the SLA at the end of a term, with or without cause. Notice of intent to non-renew must be given 7 days prior to the end of the current term by e-mail or in writing.

5.2 WebStack may discontinue service without notice if payment for service is more than 60 days overdue.

5.3 WebStack may immediately terminate service if it, in its sole discretion, concludes that Subscriber is using the e-commerce site for any illegal activities. Subscriber expressly agrees that it has no opportunity to cure this action.

5.4 There are no other provisions for terminating this SLA.

5.5 Subscriber expressly waives any statutory or other legal protection in conflict with the provisions of this Section 5.

5.6 WebStack will retain Subscriber information, including content and customer data for 30 days after termination. Thereafter, WebStack will delete from its servers, any and all content, data and files in Subscriber's account.

## **6.0 Fees and Payment**

6.1 Subscriber agrees to pay the following fees for the use of DealerStack, unless otherwise negotiated.

for Retailers:

Configuration and Setup - \$995.00 (one time charge)

Subscription - \$175.00/month (due on the 1st of each month)

Additional fees may apply for building additional catalogs, dedicated servers, or service features beyond the E-Commerce-in-the-Cloud baseline.

for Distributors:

Configuration and Setup - \$1495 (one time charge)

Subscription - \$595/month (due on the 1st of each month)

Additional fees may apply for building additional catalogs, dedicated servers, or service features beyond the E-Commerce-in-the-Cloud baseline.

6.2 WebStack invoices all fees/charges in advance and Subscriber's payment is due within 30 days from the date of the invoice. If Subscriber does not pay when due and nonpayment continues for thirty (30) days, then WebStack may declare all unpaid charges and fees immediately due and payable and discontinue service.

6.3 All fees are non-refundable.

6.4 WebStack may change the fees then in effect, or add new fees, by giving Subscriber notice 30 days in advance by e-mail.

6.5 The DealerStack service is designed and priced to serve all U.S. small businesses. However, Subscribers with a very large customer base may generate a highly disproportionate demand on the processing/bandwidth capability of the DealerStack infrastructure. Should this occur, and to maintain adequate service for all Subscribers, WebStack reserves the right to impose additional fees on these large Subscribers to cover the cost of their disproportionate demand.

## **7.0 Security**

7.1 Subscriber acknowledges that WebStack will provide DealerStack in a shared data processing environment consistent with those security measures it applies to its own internal data processing. Subscriber shall implement such security measures as may be reasonably recommended by WebStack to provide security for Subscriber's data and files. However, without limiting the foregoing, WebStack agrees to address, in good faith, any security issues that may, from time to time, be raised by Subscriber with respect to the shared data processing environment. WebStack is not liable for any loss, destruction or damage to Subscriber's DealerStack site or data files except to the extent due to the fault of WebStack and then only to the extent of restoring the lost, destroyed or damaged programs and data files, provided that such restoration can reasonably be performed by WebStack. If WebStack is unable to reasonably restore such programs or files, WebStack shall pay Subscriber for actual damages incurred by Subscriber in restoring the affected items, provided that such amount shall not exceed the then current monthly subscription fee.

## **8.0 WARRANTY DISCLAIMER**

8.1 EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THIS SLA, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RESPECTING THIS SLA AND SERVICES. WEBSTACK DOES NOT WARRANT THAT THE USE OF SOFTWARE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE.

8.2 THE SECURITY MECHANISM USED FOR DEALERSTACK HAS INHERENT LIMITATIONS AND SUBSCRIBER MUST DETERMINE THAT THE SOFTWARE ADEQUATELY MEETS ITS REQUIREMENTS.

## **9.0 Indemnity**

Each party (the "Indemnitor") shall indemnify, defend and hold harmless the other party (the "Indemnitee") from all losses, claims, suits, damages, liabilities, costs and expenses, including reasonable attorneys' fees, in connection with any claim by any third party arising out of any breach or negligence under this SLA by the Indemnitor with respect to anything sold, transferred or otherwise made available by the Indemnitor to the Indemnitee including, but not limited to equipment, software programs, files, data and facilities. In the event any such claim is made, Indemnitee shall promptly notify Indemnitor in writing and Indemnitor may, at its option, assume the defense of such claim.

## **10.0 Limitation of Remedy**

Subscriber's exclusive remedy and WebStack's entire liability in contract, tort or otherwise for any service is for WebStack to correct the service. If WebStack is unable to correct the service, then WebStack shall pay Subscriber for actual damages not to exceed the amount paid by Subscriber to WebStack for the defective service that is inoperable.

In no event shall either party be liable for any direct, special, or consequential damages arising out of this SLA or the services hereunder.

Except for an action for payment of taxes, neither party may institute any action in any form arising out of this SLA more than one (1) year after the cause of action has arisen.

## **11.0 General**

11.1 No delay or failure of either party to insist upon the performance of any obligation under this SLA, or delay or failure to exercise any right or privilege granted herein, operates as a waiver thereof. Nor will any single or partial exercise by either party of any right or remedy under this SLA preclude either of them from otherwise or further exercising these rights or remedies, or any other rights or remedies granted by any law or any related document. No waiver of rights or modifications of any provisions will be binding unless in writing and signed by a duly authorized representative of each party.

11.2 This SLA is binding on and inures to the benefit of Subscriber's successors and assigns; provided however, that Subscriber may assign the SLA only in connection with a merger, consolidation, assignment, sale or other disposition or substantially all of its assets or business. This SLA is also binding on WebStack's, successors and assigns.

11.3 The laws of Missouri will govern the validity, construction, and performance of this SLA. Any legal proceeding related to this SLA will be brought in an appropriate Missouri court, and both Subscriber and WebStack hereby consent to the exclusive jurisdiction of that court for this purpose.

11.4 Whenever possible, each provision of this SLA will be interpreted so that it is valid under the applicable law. If any provision of this SLA is to any extent declared invalid by a court of competent jurisdiction under the applicable law, that provision will remain effective to the extent not declared invalid. The remainder of this SLA also will continue to be valid, and the entire SLA will continue to be valid in other jurisdictions.

11.5 This SLA represents the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof and supersedes all prior oral and written proposals and communication.

11.6 Neither party shall be liable for any failure or delay in performance due to any cause beyond its control, including, but not limited to acts of God, fire or water damage, criminal conduct, acts of war, riots, strikes, lightning, earthquakes, electrical disturbances, and other similar causes.

11.7 Notices under this SLA shall be delivered in writing or by e-mail. If to WebStack, the communication shall be addressed to WebStack Corporation at 179 Rodeo Ln., Cuba, MO 65453, USA. If to Subscriber, the communication shall be addressed to Subscriber's Point of Contact registered and on file with WebStack.