Web design Agreement

**THIS AGREEMENT,** effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20XX, (“Effective Date”) is entered into by and between\_\_*{Your Company Name}* \_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as “Designer”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as “Client”). Designer and Client are sometimes referred to individually as a “Party” or collectively as the “Parties.”

Recitals

**WHEREAS** Designer offers website design services for businesses and individuals who desire to establish or improve their presence on the world wide web; and *{This paragraph may be modified to describe the work to be done}*

**WHEREAS** Clientis interested in utilizing the Services (as defined below) of Designer;

**NOW THEREFORE,** in consideration of the mutual covenants set out in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Designer hereby agrees to provide the Services set forth in this Agreement, and Client agrees to pay for such Services, all in accordance with the following terms and conditions:

Terms and Conditions

Article 1 SCOPE OF WORK

1.1 Designer will perform the following work for Client (hereinafter, all such work is referred to as “Services”):

*{List all work to be performed. Be as specific as possible to avoid arguments later about the scope of the work. You can also list the work on an attachment. In that case, just say “Designer will perform the work listed on the attached Exhibit A which is hereby incorporated into this Agreement in full by this reference. All such work is hereinafter referred to as “Services”.}*

In order to perform the Services, Designer requires access and write permission to Client’s website located at *{www.XXXXXX.com}* (hereinafter referred to as the “Site”). Client hereby grants Designer the right to access and write for Client’s Site directory and all other directories as necessary to perform the Services. *{This is where you should list anything you need from the Client to perform the work.}*

Search engine optimization and other such services not included in the Service may be performed by Designer at an additional fee. *{If there is some service or work that is not a part of the agreement and you want to make sure it is understood that it is not a part of the agreement then list it in the preceding sentence}* If agreed to, such services will be set forth in a separate, written agreement.

1.2 Designer is, and will perform the Services as, an independent contractor for Client. Nothing in this Agreement shall be construed as to render Designer an employee, agent, representative, joint venturer or partner of Client. Neither Party shall enter into any contracts, agreements or other obligations with any other parties which bind, or are intended to bind, the other Party. Designer and Client shall each maintain sole and exclusive control over its respective personnel and operation.

1.3 All Services provided under this Agreement shall be performed in a professional manner consistent with industry standards. Services will be performed substantially to the specifications included in Section 1.1 *{or Exhibit A}.* Designer does not make any other guarantee as to the results of Designer’s Services. Designer does not guarantee that any particular outcome will occur as a result of the Services, that an increase in Client’s customers will occur, or that the pages will operate uninterrupted or error free. Designer does not guarantee that Client’s exposure on the internet will be increased. OTHER THAN EXPRESSLY PROVIDED HEREIN, DESIGNER MAKES NO OTHER WARRANTY WITH RESPECT TO THE SERVICES TO BE PERFORMED UNDER THIS AGREEMENT WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT. THE FOREGOING PROVISION SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

Article 2 PAYMENT

2.1 Payment for Services: For the Services set forth in Article 1.1, Client shall pay to Designer the amount of $\_\_\_\_\_\_ . Payment shall be made as follows:

Within 5 days following the Effective Date, Client shall pay to Designer a non-refundable initial payment of $\_\_\_\_\_ (50% of the total amount due).

Upon Designers notification to Client of the completion of the Services, Client shall pay to Designer $\_\_\_\_\_. Such fee is due and payable prior to Designer’s delivery of the completed Services.

*{OR}*

2.1 Payment for Services: For the Services set forth in Article 1.1, Client shall pay to designer the total amount of $ \_\_\_\_\_\_\_\_\_\_ . Payments shall be made upon completion of the milestones set forth below:

Milestone Payment Amount

{*Make sure each milestone is clearly set out so that there can be no dispute over whether or not that milestone was actually reached. Milestones can also be dates. In that case, just list the dates and the amount due on each date. In either case, the final date or milestone should be completion of the project followed by the completed Services will be delivered to Client upon payment of all the above fees.}*

*{OR}*

2.1 Payment for Services: For the Services set forth in Article 1.1, Client shall pay Designer the hourly rate of $ \_\_\_\_ for all work performed. Designer shall submit monthly invoices for all Services performed in the prior month. Payment from Client shall be due within fourteen (14) days of Client’s receipt of the invoice.

2.2 Unless otherwise provided in this Agreement, all payments under this Agreement shall be non-cancelable and nonrefundable obligations. Payment not received on the terms set forth in Article 2.1 shall immediately be considered past due and accrue interest at the greater of 1 ½% per month or the highest interest rate allowed by law. All payments made to Designer under this Agreement are exclusive of, and Client shall pay and hold Designer harmless from, any local, state, federal or foreign sales, use, value-added, excise, customs, export, import or similar taxes or duties that may be imposed by any jurisdiction (other than taxes on the net income of Designer).

Article 3 COMPLETION DATE and TERMINATION

3.1 Client agrees that, in order for Designer to fully perform the Services, Client must cooperate with Designer and provide access and information deemed necessary by Designer. The failure of Client to cooperate and provide access and information could have a direct result in the success of Designer’s efforts and timeliness in completing the Services. Designer agrees to expeditiously work to complete the Services on or before 30 days following the Effective Date.

3.2 Client agrees that no work shall be done on the Site while Designer is performing the Services without Designer’s knowledge and previous written consent. Designer shall not be responsible for delays, costs, or errors that Designer determines are attributable to unauthorized changes to the Site.

3.3 Designer can terminate at any time, without notice, for non-payment or, in Designer’s sole opinion, if Client is not granting the access or information needed by Designer to fully perform the Services. Upon such termination, Client shall pay to designer a proportionate amount (as determined by Designer) for all Services performed up to and including the date of termination.

Article 4 INDEMNIFICATION

4.1 Client represents and warrants to Designer that Client is the legal owner of the Site, and has the right to grant Designer access to all web pages necessary to perform the Services, and owns all materials of any kind provided to Designer for use under this Agreement and that Client has full right, title and interest to such Site and materials. Client represents and warrants that the Site and any materials provided to Designer shall be free of any claim of trade secret, trademark, trade name, copyright, or patent infringement or other violations of any intellectual property rights of any person.

4.2 Client shall defend, indemnify and hold harmless, Designer, its officers, agents, employees, successors and assigns from and against any and all liability, damages, losses, claims, demands, actions, causes of action, and costs, including but not limited to reasonable attorney’s fees and expenses, arising out of any and all claims arising out of or related to the Services performed or to be performed under this Agreement including, but not limited to, claims that Designer’s access or use of the Site or materials provided by Client infringes upon any trade secret, trademark, trade name, copyright, patent, or other intellectual property right.

Article 5 LIMITATION OF LIABILITY

DESIGNER WILL NOT BE LIABLE to Client for any special, indirect, incidental or consequential damages whatsoever whether in contract, tort (including negligence) or strict liability including, but not limited to, loss of use of or under-utilization of labor or facilities, loss of revenue or anticipated profits, or claims from customers, resulting from DESIGNER’s performance or nonperformance of its obligations under this Agreement, or in the event of suspension of the Services or termination of this Agreement. DESIGNER’s AGGREGATE LIABILITY TO CLIENT UNDER THIS AGREEMENT for any and all claims SHALL NOT EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY CLIENT AND RECEIVED BY DESIGNER UNDER THIS AGREEMENT.

SOME STATES AND JURISDICITONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CLIENT. THE FOREGOING PROVISION SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

Article 6 INTELLECTUAL PROPERTY

Right and title to all ideas, trade secrets, business processes, inventions, discoveries, and other intellectual property (collectively referred to as “Inventions”) used or developed by Designer in the performance of the Services shall remain with Designer. Upon payment of all fees due hereunder, Client is hereby granted a non-exclusive license to use the Inventions on the Site. Client agrees to keep confidential any and all Inventions not publicly known such as source code or other Inventions utilized by Designer under this Agreement.

*{OR}*

Right and title to all ideas, trade secrets, business processes, inventions, discoveries, and other intellectual property (collectively referred to as “Inventions”) used or developed by Designer in the performance of the Services shall pass to Client upon payment of all fees due. Designer is hereby granted an exclusive, worldwide, perpetual license to use the Inventions in Designers work for other customers.

*{OR}*

Right and title to all ideas, trade secrets, business processes, inventions, discoveries, and other intellectual property (collectively referred to as “Inventions”) used or developed by Designer in the performance of the Services shall pass to Client upon payment of all fees due provided, however, that all ideas, trade secrets, business processes, inventions, discoveries, and other intellectual property of Designer known or utilized by Designer prior to the start of the Services shall remain with Designer even if used in the performance of the Services.

Article 7 GENERAL

7.1 Severability: If any section, provision or portion of this Agreement is held to be invalid, illegal or void by a court of proper jurisdiction, the remainder of this Agreement shall subsist and continue in full force and effect.

7.2 Assignment: Neither this Agreement nor any interest under it shall be assigned without the prior written consent of Designer.

7.3 Governing Law and Jurisdiction: This Agreement shall be interpreted, governed and construed under the laws of the State of California, United States of America, as if executed and to be performed wholly within the State of California, United States of America. Any claim under this Agreement shall be brought before a court of competent jurisdiction in Orange County, in the State of California, in the United States of America.

7.4 Waivers: Any waiver by either Party of any violation of, breach of or default under any provision of the Agreement by the other Party shall not be effective unless stated specifically in writing and shall not be construed as, or constitute, a continuing waiver of such provisions, or waiver of any other violation of, breach of or default under any other provision of the Agreement.

7.5 Section Headings: Section headings appearing in this Agreement are for convenience only and shall not be construed as interpretations of text.

7.6 Notices: Any legal notice pertaining to this Agreement shall be in writing and sent by email, personal delivery, facsimile, or registered or certified mail, postage prepaid, to Designer or to Client, as appropriate, at their respective addresses appearing below:

**In the case of Designer:**

**E-mail:**

**Attention:**

**Address:   
 Phone:**

**Fax:**

**In the case of Client:**

**E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Any notice delivered by mail shall be deemed given when received. The date of receipt of any notice by facsimile shall be the date upon which the transmitter of the facsimile receives confirmation of the facsimile transmission.

7.7 Third Parties: Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person or entity any rights or remedies under, or by reason of, this Agreement, except as specifically provided for in this Agreement.

7.8 Entire Agreement: This Agreement contains the entire agreement and understanding between the parties and merges and supersedes all prior representations and discussions pertaining to this Agreement. Any changes, exceptions, or different terms and conditions proposed by either Party are hereby rejected unless expressly incorporated in this Agreement in writing and signed by both parties.

7.9 Survival: Notwithstanding completion or termination of the Services, the Agreement or any portion thereof, the Parties shall continue to be bound by those provisions of the Agreement which by their nature survive such completion or termination including, but not limited to, Articles 2, 4, 5, 6 and 7.

7.10 Uncontrollable Forces: Neither Party shall be liable for any delay or failure to perform its obligations under this Agreement due to any cause beyond its reasonable control, such as strike, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, or earthquake. Uncontrollable forces also shall include the actions of search engines, directories and related parties. The delay or failure in performance excused by this Article 7.10 shall only be excused for so long as the causes of such excusable delay or failure subsist. The Parties shall resume the performance of their respective obligations upon cessation of the cause of such excusable delay or failure.

7.11 Disputes and Arbitration: Any unresolved disputes shall be referred to Designer’s President, or a designee, and the owner or an officer of Client for resolution. Pending resolution, Designer shall continue to perform the Services, and Client shall continue to make payment for the undisputed items. If no resolution can be reached, the dispute shall be submitted, at Designer’s sole discretion, to either 1) small claims court or 2) arbitration. Should Designer choose to settle a dispute arising out of or in connection with this Agreement to arbitration, then the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The arbitration authority shall be a court of competent jurisdiction in the County of Los Angeles, State of California in the United States of America as chosen by Designer. *{The county and state should be convenient to you}* The arbitration award shall be final and binding on both Parties.

7.12 Language: The language of this Agreement is in English as in common use in the United States of America (US English) and any disputes with translations of this agreement or its counterparts in other languages shall be settled finally in US English. *{Only necessary if you are dealing with someone outside of the U.S.}*

7.13 Time and Dates: All references to dates and other calendar events shall be in the Gregorian calendar such as in common use in North America. All references to dates and/or times shall further be relative to the principle place of business of the Designer unless otherwise specified. *{Only necessary if you are dealing with someone outside of the U.S.}*

7.14 Counterparts: This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.15 Successors: This Agreement is binding on all successors, permitted assigns, heirs, executors and administrators of the Parties hereto.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed as of the day and year first written below.

**DESIGNER**

Designer Signatory

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CLIENT**

Client Signatory

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_