Website maintenance Agreement

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

Recitals

**WHEREAS** Contractor offers website development and maintenance services (the “Services”) designed to improve websites; and *{This paragraph may be modified to describe the work to be done}*

**WHEREAS** Customer is interested in utilizing Contractor to perform the Services;

**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, Contractor hereby agrees to provide website maintenance as set forth in this Agreement, and Customer agrees to pay for the website maintenance services, all in accordance with the following terms and conditions:

Terms and Conditions

Article 1 SCOPE OF WORK

1.1 Contractor will develop and/or maintain Customers Website located at www. abc.com (the “Site”) as further set forth below. In order to perform the Services, Contractor will require access and write permission from Customer. Customer hereby authorizes Contractor to access the Site and grants Contractor “write permission” to access and write to all Site directories and/or programs which need to be accessed to perform the Services. *{You should list anything else you may need from the Customer to perform the work in following paragraphs.}*

In performing the Services, Contractor’s work will include

*{List all work to be performed. Some examples would be things like create new script or code in order to facilitate \_\_\_. Install patches, fixes, updates..etc. Talk with hosting provider regarding issues. Consultation, troubleshooting. 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 “Contractor will perform the Services as set forth in the attached Exhibit A which is hereby incorporated into this Agreement in full by this reference.}*

Search engine optimization and other such services not included in the Service may be performed by Contractor 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 Contractor is, and will perform the Services as, an independent contractor for Customer. Nothing in this Agreement shall be construed as to render Contractor an employee, agent, representative, joint venturer or partner of Customer. 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. Contractor and Customer 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}.* Contractor does not make any other guarantee as to the results of Contractor’s Services. Contractor does not guarantee that any particular outcome will occur as a result of the Services, that an increase in Customer’s customers will occur, or that the web pages will operate uninterrupted or error free. Contractor does not guarantee that Customer’s exposure on the internet will be increased. OTHER THAN EXPRESSLY PROVIDED HEREIN, CONTRACTOR 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 CUSTOMER. THE FOREGOING PROVISION SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

Article 2 PAYMENT

2.1 *{If a one time service}* Payment for Services: For the Services set forth in Article 1.1, Customer shall pay to Contractor the amount of $\_\_\_\_\_\_ . Payment shall be made as follows:

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

Upon Contractors notification to Customer of the completion of the Services, Customer shall pay to Contractor $\_\_\_\_\_.

*{OR}*

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

Milestone Payment Amount

xxx $$$

*{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 Customer upon payment of all the above fees.}*

*{OR}*

2.1 Payment for Services: For the Services set forth in Article 1.1, Customer shall pay Contractor the hourly rate of $ \_\_\_\_ for the Services performed. Contractor shall submit monthly invoices for all Services performed in the prior month. Payment from Customer shall be due within fourteen (14) days of Customer’s receipt of the invoice. *{Can be used for one time or for on-going maintenance work}*

*{OR}*

2.1 *{On-Going Maintenance – Use this or the previous.}* Payment for Services: For the Services set forth in Article 1.1, Customer shall pay Contractor the fixed rate of $\_\_\_\_\_ per month. Such rate shall include Services for up to \_\_\_\_ hours per month. For Services performed in excess of \_\_\_ per month Customer shall pay the hourly rate of $ \_\_\_\_. Contractor shall submit monthly invoices for all Services performed in the prior month. Payment from Customer shall be due within fourteen (14) days of Customer’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 Contractor under this Agreement are exclusive of, and Customer shall pay and hold Contractor 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 Contractor).

Article 3 TERM and TERMINATION

3.1 This Agreement is effective on the Effective Date and will continue for an initial term of one year. Unless terminated by either party, this Agreement will remain in full force and effect on a month to month basis thereafter. {*Can be for any time period. Can automatically renew or require both parties consent to renew*}

3.3 After the first year, either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party. Contractor can terminate at any time, without notice, for non-payment or, in Contractor’s sole opinion, if Customer is not granting the access or information needed by Contractor to fully perform the Services. Upon such termination, Customer shall pay to Contractor a proportionate amount (as determined by Contractor) for all Services performed up to and including the date of termination.

Customer agrees that, in order for Contractor to fully perform the Services, Customer must cooperate with Contractor and provide access and information deemed necessary by Contractor. The failure of Customer to cooperate and provide access and information could have a direct result in the success of Contractor’s efforts and timeliness in completing the Services.

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

Article 4 INDEMNIFICATION

4.1 Customer represents and warrants to Contractor that Customer is the legal owner of the Site, and has the right to grant Contractor the right to access and write to directories and web pages necessary to perform the Services. Customer represents and warrants that the Site and any materials provided to Contractor 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 Customer shall defend, indemnify and hold harmless, Contractor, 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 Contractor’s access or use of the Site or materials provided by Customer infringes upon any trade secret, trademark, trade name, copyright, patent, or other intellectual property right.

Article 5 LIMITATION OF LIABILITY

CONTRACTOR WILL NOT BE LIABLE to Customer 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 CONTRACTOR’s performance or nonperformance of its obligations under this Agreement, or in the event of suspension of the Services or termination of this Agreement. CONTRACTOR’s AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT for any and all claims SHALL NOT EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY CUSTOMER AND RECEIVED BY CONTRACTOR 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 CUSTOMER. 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 Contractor in the performance of the Services shall remain with Contractor. Upon payment of the fees due hereunder, Customer is hereby granted a non-exclusive license to use the Inventions solely in connection with the Site and without modification except with the written permission of Contractor. Customer agrees to keep confidential any and all Inventions not publicly known such as source code or other Inventions utilized by Contractor under this Agreement.

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 Contractor.

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.

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 Contractor or to Customer, as appropriate, at their respective addresses appearing below:

**In the case of Contractor:**

**E-mail:**

**Attention:**

**Address:   
 Phone:**

**Fax:**

**In the case of Customer:**

**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 Contractor’s President, or a designee, and the owner or an officer of Customer for resolution. Pending resolution, Contractor shall continue to perform the Services, and Customer shall continue to make payment for the undisputed items. If no resolution can be reached, the dispute shall be submitted, at Contractor’s sole discretion, to either 1) small claims court or 2) arbitration. Should Contractor 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 American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The arbitration authority shall be in the County of Los Angeles, State of California in the United States of America as chosen by Contractor. *{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 Contractor 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 set forth below.

**CONTRACTOR**

Contractor Signatory

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

**CUSTOMER**

Customer Signatory

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