I'm not robot

reCAPTCHA

Continue

I'm not robot

reCAPTCHA

Hosting agreement template

1. Overview An overview has not been defined yet. 2. Discussion A Guidance has not been defined yet. Website or Web Application Owner, the Client, ; and Hosting Provider, the Company, , The purpose of this Agreement (hereafter referred to as the "Agreement") is to precede a longer-term contract arrangement under which Company will provide Web Hosting services on behalf of Client. TERMS Subject to the terms and conditions of this Agreement, Company will provide Web Hosting services for Client subject to the following terms: Length of Service.Client agrees to an initial twelve (12) month contractual term of service ("Term"). Service Start Date.The first payment plus setup charges, if any, shall be due in advance of any service provided. Service shall begin upon Company receipt of payment for such first Term of service or upon a mutually agreed upon alternate date. Renewal by Client.This Agreement will automatically renew for successive twelve (12) month Terms unless canceled in writing by Client at least 30 days prior to the end of Term renewal date. Renewal prices are subject to change. Renewal of services by Client indicates agreement to any Contract revisions and price changes. Renewal fees for the following term will be automatically invoiced to Client's account. COST Cost will be $Amount per year and includes the following: 500 MB Storage 10 GB Bandwidth PCI Compliant Scheduled Weekly Backups On Demand Backups Phone Support TERMS OF PAYMENT Terms of payment are C.O.D. unless credit approval has been granted by Company. If credit approval has been granted, credit terms are net 10 days upon receipt of invoice. We reserve the right to revoke any credit extended if payment is in arrears for more than 30 days. PROPRIETARY INFORMATION Proprietary information exchanged here under shall be treated as such by Client. This information shall include, but not be limited to, the provisions of this Agreement, product and services information and pricing. Client further agrees to not decompose, disassemble, decode or reverse engineer any Company program, code or technology delivered to Client or any portion thereof. CENSORSHIP Company will exercise no control whatsoever over the content of the information passing through the network, email or web sites. WARRANTIES Company makes no warranties or representations of any kind, whether expressed or implied for the service it is providing. Company also disclaims any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by Client, including loss of data resulting from delays, non-deliveries or service interruptions by any cause or errors or omissions of Client. Use of any information obtained by way of Company is at Client's own risk, and Company specifically denies any responsibility for the accuracy or quality of information obtained through its services. Connection speed represents the speed of an end-to-end connection. Company does not represent guarantees of speed or availability of end-to-end connections. Company expressly limits its damages to Client for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. Company specifically denies any responsibilities for any damages arising as a consequence of such unavailability. TRADEMARKS AND COPYRIGHTED MATERIAL Client warrants that it has the right to use any applicable trademarks or copyrighted material used in connection with this service. TERMINATION Company may terminate this Agreement at its sole discretion upon the occurrence of one or more of the following events: 1) failure to comply with any provisions of the Agreement upon receipt of written notice from Company of said failure, 2) appointment of Receiver or upon the filing of any application by Client seeking relief from creditors, 3) upon mutual agreement in writing of Company and Client. DISPUTES If legal proceedings are commenced to resolve a dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover all costs, legal fees, and expert witness fees as well as any costs or legal fees in connection with any appeals. INDEMNIFICATION Client shall indemnify and hold Company harmless from and against any and all claims, judgments, awards, costs, expenses, damages and liabilities (including reasonable attorney fees) of whatsoever kind and nature that may be asserted, granted or imposed against Company directly or indirectly arising from or in connection with Client's marketing or support services of the product or services or the unauthorized representation of the product and services or any breach of this Agreement by Client. GENERAL If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement shall be governed by and construed in accordance with the laws of the State of . A failure by any party to exercise or delay in exercising a right or power conferred upon it in this Agreement shall not operate as a waiver of any such right or power. APPROVAL _____ Signed by and on behalf of _____ Date _____ Signed by and on behalf of _____ Date *Both parts must sign above and keep a copy for their own records. 1 COOLEY GODWARD LLP SAMPLE WEBSITE DEVELOPMENT AND HOSTING AGREEMENT (updated May 1998) This form is written as a sample agreement that would be used when a customer desires to procure website development and hosting services from a provider. This sample agreement is customer-favorable and is likely to contain many provisions unacceptable to providers. The following provisions should be specifically considered: 1. The opening paragraph needs to be filled in 2. Section 3: The time period for a response to the Change Order should be filled in 3. Section 14.1: The county for jurisdiction should be filled in. 6. Exhibits A and B should be completed. Of course, any sample agreement cannot provide legal guidance. Therefore, this agreement is merely intended to describe terms that are worth considering in the process of drafting a website development and hosting agreement, but it should not be considered as rendering legal advice about the effect of such provisions. In all cases, users of this document should consult a qualified attorney to discuss the legal implications of the provisions in this sample. WEBSITE DEVELOPMENT AND HOSTING AGREEMENT THIS WEBSITE DEVELOPMENT AND HOSTING AGREEMENT (the "Agreement") is made as of _____, 199___, by and between _____ a corporation ("Provider"), and _____, a _____ ("Customer"). 1. DEFINITIONS. 1.1 "Content" means all text, pictures, sound, graphics, video and other data supplied by Customer to Provider pursuant to Sections 2.1 or 4.1(c), as such materials may be modified from time to time. 1.2 "Design Fee" means the fees set forth in Exhibit A for Website development services provided pursuant to Section 2. 1.3 "Domain Name" means the domain name specified for the Website by Customer from time to time. The initial Domain Name is specified in Exhibit A. 1.4 "Intellectual Property Rights" means any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (regardless of whether such rights take the form of any of the foregoing). 1.5 "Milestone Delivery Schedule" means the schedule for development of the Work Product set forth in Exhibit A. 1.6 "Provider Tools" means any tools, both in object code and source code form, which Provider has already developed or which Provider independently develops or licenses from a third party, excluding any tools which Provider creates pursuant to this Agreement. By way of example, Provider Tools may include, without limitation, toolbars for maneuvering between pages, search engines, Java applets, and ActiveX controls. All Provider Tools used in the Website shall be set forth in Exhibit A. 1.7 "Specifications" means Customer's requirements set forth in Exhibits A and B, as amended or supplemented in accordance with this Agreement. 1.8 "User Content" means all text, pictures, sound, graphics, video and other data provided by Website users. 1.9 "Website" means the user interface, functionality and Content made available on pages under the Domain Name. 1.10 "Work Product" means all HTML files, Java files, graphics files, animation files, data files, technology, scripts and programs, both in object code and source code form, all documentation and any other deliverable prepared for Customer by Provider in accordance with the terms of this Agreement. 2. WEBSITE DEVELOPMENT. 2.1 Delivery of Initial Content. Customer shall deliver to Provider all Content that Customer intends for Provider to incorporate in the Work Product (the "Initial Content"). The Initial Content shall be in the format(s) specified in Exhibit A. 2.2 Development. Provider shall provide design, programming and other consulting services as specified in Exhibit A or the Design Fee set forth therein. Provider will provide the Work Product to Customer in accordance with the Milestone Delivery Schedule. Time is of the essence with respect to the performance of Provider's services hereunder. 2.3 Project Liaisons. Each party's primary contact for development efforts shall be the project liaisons specified in Exhibit A or the person otherwise designated in writing by Customer or Provider, as the case may be. 2.4 Provider Tools. In the event any Provider Tools are incorporated into or are used in conjunction with the Website, and during the term of this Agreement, Provider hereby grants to Customer a worldwide, non-exclusive, sublicensable (through multiple tiers), assignable, royalty-free, perpetual, irrevocable right to use, reproduce, distribute (through multiple tiers), create derivative works of, publicly perform, publicly display, digitally perform, make, have made, sell, offer for sale and import such Provider Tools in any media now known or hereafter known. Throughout the term of the Agreement and immediately upon termination, Provider shall provide to Customer the most current copies of any Provider Tools to which Customer has rights pursuant to the foregoing, plus any related documentation. 2.5 Shadow Site; Acceptance. Provider shall make available complete versions of the Work Product on a password protected server (the "Shadow Site") for Customer's review and acceptance. Customer shall have 30 days to review and evaluate the Work Product (the "Acceptance Period") to assess whether it meets the Specifications and meets industry standards for professional, technical and artistic quality. If Customer rejects the Work Product during the Acceptance Period, Customer may, in its sole discretion, elect to: (a) extend the time for Provider to provide revised Work Product for acceptance testing in accordance with this section; (b) revise the Specifications and to negotiate an appropriate reduction in the Design Fee to reflect the revised Specifications; (c) complete the Work Product and deduct the costs of completion from the Design Fee; or (d) terminate this Agreement, in which case Section 6.3 applies. 2.6 Search Engine Registration. When Provider makes the final version of the Work Product available to Customer, Provider shall propose Customer 50 search engines and directories where the Website should be registered. If requested by Customer, Provider at its expense shall promptly register all Website pages with all (or a designated subset) of such sites. 2.7 Back up of Work Product. Prior to initial acceptance of the Work Product, Provider shall back up its work at least once every 3 days and to store such back-up materials in a secure site at a separate location. 3. MODIFICATIONS. If Customer desires to modify the Website (including the Platform Requirements specified in Exhibit A) at any time during the term of this Agreement, Customer shall describe the additional services or deliverables to Provider (the "Change Notice"). Within ___ days of such Change Notice, Provider shall submit a change order proposal (the "Change Order") which includes a statement of any additional charges and, if the Change Notice is provided prior to initial acceptance of the Work Product pursuant to Section 2.5, any adjustments to the Milestone Delivery Schedule resulting from the proposed Change Notice. On Customer's written approval of the Change Order, the Change Order will become a part of this Agreement. Any additional deliverables or changes to the Website described in the Change Order shall be subject to acceptance testing at the Shadow Site as described in Section 2.5. Provider shall quote all charges for the Change Orders at its then-current standard charges, but in no event shall it exceed the per hour specified in Exhibit A. 4. WEB HOSTING. 4.1 Services. Following Customer's initial acceptance of the Work Product pursuant to Section 2.5, Provider shall provide the following web hosting services: (a) Domain Name. If requested by Customer, Provider at its expense shall cooperate with Customer in registering the Domain Name with InterNIC. Customer shall own all right, title and interest in and to the Domain Name and all Intellectual Property Rights related thereto. Unless otherwise specified by Customer, Provider shall list Customer's project liaison as the administrative, technical and billing contact. (b) Content Control. Customer shall have sole control over the Content. Provider shall not supplement, modify or alter any Work Product which has been accepted by Customer or any Content (other than modifications strictly necessary to upload the Content to the Website) except with Customer's prior written consent. Provider shall upload all Content, including updates, to the Website within 24 hours of delivery to Provider. Provider shall also permit Customer to electronically transmit or upload Content directly to the Website. (c) Site Backup. At Provider's expense, Provider shall maintain a complete and current copy of the Website on a server located at a remote location. In the event that service is interrupted to the Website, the remote server shall be immediately activated so that public access to the Website continues without interruption. (d) Site Downloads. Provider at its expense shall make a complete backup of the Website every day. On the first day of every month, and at any other time as reasonably requested by Customer, Provider at its expense shall deliver to Customer in electronic form the current copy of the Website (including all Provider Tools). (e) Server Logs. On the first day of every month, and at any other time as reasonably requested by Customer, Provider at its expense shall deliver to Customer in electronic form the server logs of Website activity (the "Server Logs"). (f) Standards. Provider's hosting standards shall conform to the following: (i) Availability of Web Site. The Website shall be publicly available to users a minimum of ___% of the time during any 24 hour period, ___% of the time during any 7 day period, and ___% of the time during any 30 day period; and there will be no period of interruption in public accessibility to the Website that exceeds ___ continuous hours. (ii) Response Time. The mean response time for server response to all accesses to the Website shall not exceed more than ___ seconds during any 1 hour period. (iii) Bandwidth. The bandwidth representing the Website's connection to the Internet shall be operating at capacity no more than ___ minutes in any 24 hour period. (iv) Security. Provider shall prevent unauthorized access to the Shadow Site, other restricted areas of the Website and any databases or other sensitive material generated from or used in conjunction with the Website; and Provider shall notify Customer of any known security breaches or holes. (v) Inapplicability of Force Majeure. The foregoing standards shall apply regardless of the cause of the interruption in service, even if the interruption in service was beyond the control of Provider. (vi) Remedies. In addition to other applicable remedies, Customer may immediately terminate this Agreement without a further cure period if: (x) any breach of this Section 4.1(f) is not cured within the later of the next measurable period (only if applicable) or 10 days, (y) the same subsection is breached a second time, or (z) there are 2 breaches of separate subsections (even if cured) within any 6 month period. 4.2 Section 4.1(f): The standards should be filled in. 5. Section 14.1: The county for jurisdiction should be filled in. License. During the period that Provider provides web hosting services pursuant to this Section 4, Customer hereby grants to Provider a non-exclusive, non-sublicenseable, royalty-free, worldwide license to reproduce, distribute, publicly perform, publicly display and digitally perform the Content and Work Product only on or in conjunction with the Website. Customer grants no rights other than explicitly granted herein, and Provider shall not exceed the scope of its license. 4.3 Trademarks. Subject to the terms and conditions of this Agreement, each party hereby grants to the other party a limited, non-exclusive, non-sublicenseable, royalty-free, worldwide license to use such party's trademarks, service marks, trade names, logos or other commercial or product designations (collectively, "Marks") for the purposes of creating content directories or indexes and for marketing and promoting the Website. The trademark owner may terminate the foregoing license if, in its sole discretion, the licensee's use of the Marks does not conform to the owner's standards. Title to and ownership of the owner's Marks shall remain with the owner. The licensee shall use the Marks exactly in the form provided and in conformance with any trademark usage policies. The licensee shall not form any combination marks with the other party's Marks. The licensee shall not take any action inconsistent with the owner's ownership of the Marks and any benefits accruing from use of such Marks shall automatically vest in the owner. 5. PAYMENTS. 5.1 Fees. Except as otherwise specified in Exhibit A, Provider shall invoice all fees monthly, and payment is due 30 days from delivery of the invoice. All fees quoted include, and Provider shall pay, all sales, use, excise and other taxes which may be levied upon either party in connection with this Agreement, except for taxes based on Customer's net income. 5.2 Expenses. Customer shall reimburse Provider for all reasonable out-of-pocket expenses which have been approved in advance by Customer and which are incurred by Provider in the performance of services hereunder, including but not limited to travel and lodging expenses, long distance calls, and material and supply costs, within 30 days after Customer's receipt of expense statements including appropriate receipts or other evidence of the expense. 6. TERM AND TERMINATION. 6.1 Term. The initial term of this Agreement shall be as specified in Exhibit A. Thereafter, this Agreement shall continue until terminated with at least 90 days written notice. 6.2 Termination for Cause. Except as otherwise provided for herein, either party may terminate this Agreement upon the material breach of the other party, if such breach remains uncured for 60 days following written notice to the breaching party. 6.3 Termination During Initial Website Development. In the event that Customer terminates the Agreement prior to initial acceptance of the Work Product pursuant to Section 2.5, Customer shall return all Work Product to Provider and Provider shall return any Initial Content and refund to Customer any portion of the Design Fee previously paid to Provider hereunder. All licenses granted hereunder shall terminate. 6.4 Termination During Website Hosting. In the event of expiration or termination of this Agreement while Provider is providing Web hosting services pursuant to Section 4, Provider shall download all materials on the Website to a medium of Customer's choosing and deliver such materials to Customer by 5 p.m. the same business day. In addition, at no cost to Customer, Provider shall: (a) keep the Website publicly accessible for a period of 90 days following the date of termination of this Agreement; (b) if the transfer requires a change in the Domain Name, immediately upon the date that the Website is no longer publicly accessible, and for a period of 12 months thereafter, maintain the Website's URL and, at such URL, provide 1 page (including a hypertext link) that Customer may use to direct its users to its new Website or some other URL of Customer's choosing; and (c) if the transfer does not require a change in the Domain Name, cooperate with Customer in assigning a new IP address to the Domain Name as Customer may request and transferring all operations of the Website to a new provider. 6.5 Effect of Termination. Sections 1, 2.4, 6.5, 10, 11, 12, 13 and 14 shall survive termination of this Agreement. Upon the termination of this Agreement for any reason and upon request by Customer at any time, Provider shall promptly return, in their original form, to Customer the Content and deliver the originals and all copies of the Work Product in whatever state of completion to Customer. Subject to Provider's obligations pursuant to Section 6.4, Provider shall remove all copies of the Content from servers within its control and use reasonable efforts to remove any references to Customer or the Content from any sites which caches, indexes or links to the Website. 7. PROVIDER WARRANTIES. 7.1 Work Product Warranties. Provider warrants that any Work Product, Provider Tools or Provider-made changes to the Content shall not: (a) infringe on the Intellectual Property Rights of any third party or any rights of publicity or privacy; (b) violate any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, antidiscrimination or false advertising); (c) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (d) be obscene, child pornographic or indecent; and (e) contain any viruses, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. 7.2 Additional Warranties. Provider warrants that: (a) any Work Product or Provider Tools will conform to their applicable Specifications or acceptance criteria when delivered and for a period of 1 year thereafter; and (b) there is no outstanding contract, commitment or agreement to which Provider is a party or legal impediment of any kind known to Provider which conflicts with this Agreement or might limit, restrict or impair the rights granted to Customer hereunder. 7.3 Year 2000. Provider warrants that any Work Product or Provider Tools will: (a) include year 2000 date conversion and compatibility capabilities including, but not limited to: century recognition; calculations which accommodate same century and multi-century formulas and date values; correct sort ordering; and interface values that interpret the century; (b) manage and manipulate data involving dates, including single century formulas and multi-century formulas, and will not cause an abnormal ending or result in the generation of incorrect values or invalid outputs including such duties; (c) provide that all date-related user interface functionalities and data fields include the indication of the correct century; and (d) provide that all date-related system to system or application to application data interface functionalities will include the indication of the correct century. 8. CUSTOMER COVENANTS. During the period that Provider provides Web hosting services pursuant to Section 4, Customer shall not distribute on the Website any Content that: (a) infringes on the Intellectual Property Rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, antidiscrimination or false advertising); (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (d) is obscene, child pornographic or indecent; or (e) contains any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. 9. DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. 10. OWNERSHIP. 10.1 Ownership of Work Product. Provider hereby irrevocably assigns to Customer all right, title and interest in and to all Work Product and documentation produced pursuant to Customer's requests for services hereunder including, without limitation, all applicable Intellectual Property Rights thereto. If Provider has any such rights that cannot be assigned to Customer, Provider waives the enforcement of such rights, and if Provider has any such rights that cannot be assigned or waived, Provider hereby grants to Customer an exclusive, irrevocable, perpetual, worldwide, fully paid license, with right to sublicense through multiple tiers, to such rights. Provider acknowledges that there are, and may be, future rights that Customer may be entitled to with respect to the Work Product that do not yet exist, as well as new uses, media and forms of exploitation throughout the universe exploiting current or future technology yet to be developed. Provider specifically intends the foregoing assignment of rights to Contractor to include all such now known or unknown uses, media and forms of exploitation throughout the universe. 10.2 Ownership of Content and Website. As between Provider and Customer, any Content given to Provider by Customer under this Agreement or otherwise, and all User Content, shall at all times remain the property of Customer or its licensor. Provider shall have no rights in such Content or User Content other than the limited right to use such content for the purposes expressly set forth in this Agreement. 10.3 Employee and Subcontractor Contracts. Provider shall cause each individual or company employed by Provider in connection with the Work Product to execute a contract regarding confidentiality and assignment of rights prior to each such individual or company's commencement of services thereunder. Such contracts shall: (a) include a full assignment of all rights to Customer; (b) include a waiver of any moral or similar rights, (c) be freely assignable, and (d) contain restrictions on use and disclosure. Further, with respect to any subcontractors which it employs: (x) Provider shall obtain the written consent of Customer, (y) Provider shall be responsible for the direction and coordination of the services of such subcontractors, and (z) Customer shall have no obligation to pay such subcontractor(s). 11. INDEMNITY. 11.1 Customer Indemnity. Customer shall defend Provider against any third party claim, action, suit or proceeding alleging any breach of the covenants contained in Section 8. Subject to Section 11.3, Customer shall indemnify Provider for all losses, damages, liabilities and all reasonable expenses and costs incurred by Provider as a result of a final judgment entered against Provider in any such claim, action, suit or proceeding. 11.2 Provider Indemnity. Provider shall defend Customer against any third party claim, action, suit or proceeding (including without limitation Provider's breach of the warranties contained in Sections 7). Subject to Section 11.3, Provider shall indemnify Customer for all losses, damages, liabilities and all reasonable expenses and costs incurred by Customer as a result of a final judgment entered against Customer in any such claim, action, suit or proceeding. 11.3 Mechanics of Indemnity. The indemnifying party's obligations are conditioned upon the indemnified party: (a) giving the indemnifying party prompt written notice of any claim, action, suit or proceeding for which the indemnified party is seeking indemnity; (b) granting control of the defense and settlement to the indemnifying party; and (c) reasonably cooperating with the indemnifying party at the indemnifying party's expense. 12. CONFIDENTIAL INFORMATION. Customer's "Confidential Information" are any passwords used in connection with the Website (or the Shadow Site), all Server Logs, all Work Product and documents related to the Work Product, any Content which Customer designates as confidential, and any other materials of Customer which Customer designates as confidential or which Provider should reasonably believe to be confidential. Customer's "Confidential Information" also includes the Website itself until such time as Customer decides to make the Website publicly available to users. Provider's "Confidential Information" is defined as the source code of any Provider Tools. Provider understands and agrees that Customer does not want any other Confidential Information of Provider, and should the parties believe that additional Confidential Information of Provider needs to be disclosed to Customer, the parties shall execute a separate non-disclosure agreement regarding such information. Each party shall hold the other party's Confidential Information in confidence and shall not disclose such Confidential Information to third parties nor use the other party's Confidential Information for any purpose other than as necessary to perform under this Agreement. The foregoing restrictions on Provider's use of Customer's Confidential Information which is (a) already known by the recipient, (b) becomes, through no act or fault of the recipient, publicly known, or (c) received by recipient from a third party without a restriction on disclosure or use, or (d) independently developed by recipient without reference to the other party's Confidential Information. 13. LIMITATIONS ON LIABILITY. EXCEPT FOR BREACHES OF SECTIONS 4.1, 4.2, 4.3 AND 14.3, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (HOWEVER ARISING, INCLUDING NEGLIGENCE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. 14. GENERAL PROVISIONS. 14.1 Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of California without giving effect to principles of conflict of laws. Both parties agree to submit to jurisdiction in California and further agree that any cause of action arising under this Agreement may be brought in a court in _____ County, California. 14.2 Further Assurances. Provider shall cooperate with Customer, both during and after the term of this Agreement, in the procurement and maintenance of Customer's rights to intellectual property created hereunder and to execute, when requested, any other documents deemed necessary or appropriate by Customer to carry out the purpose of this Agreement. 14.3 Compliance With Laws. Provider shall ensure that its Website design and its web hosting services will comply with all applicable international, national and local laws and regulations. 14.4 Severability; Waiver. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. 14.5 Headings. Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement. 14.6 Assignment and Subcontracting. This Agreement and the obligations hereunder are personal to Provider and Provider may not assign its rights, delegate its duties or obligations hereunder under this Agreement without Customer's prior written consent in Customer's sole discretion. The sale, transfer or encumbrance of 25% or more of the ownership interest in, or voting stock of, Provider or the merger of Provider into or with any other third party or entity, shall be deemed an assignment for purposes of this Section 14.6. Customer may assign, transfer, delegate or grant all or any part of its rights pursuant to this Agreement to any person or entity. Any assignment, delegation or subcontract in violation of this Section 14.6 shall be void and of no effect. The parties' rights and obligations will bind and inure to the benefit of their respective successors and permitted assigns. 14.7 Independent Contractors. The parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party shall have the power to obligate or bind the other party. Personnel supplied by Provider shall work exclusively for Provider and shall not, for any purpose, be considered employees or agents of Customer. Provider assumes full responsibility for the acts of such personnel while performing services hereunder and shall be solely responsible for their supervision, direction and control, compensation, benefits and taxes. 14.8 Notice. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given: upon personal delivery; if sent by telephone facsimile, upon confirmation of receipt; or if sent by certified or registered mail, postage prepaid, 5 days after the date of mailing. 14.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. 14.10 Injunctive Relief. Provider hereby waives any right to injunctive relief or rescission and agrees that its sole and exclusive remedy for any breach or alleged breach, termination or cancellation of this Agreement by Customer shall be an action for damages and termination of its services hereunder. Provider agrees that a breach by Provider and that monetary damages in such event would be substantial and inadequate to compensate Customer. Consequently, Customer shall be entitled, in addition to such monetary relief as may be recoverable by law, to such injunctive or other relief as may be necessary to restrain any threatened, continuing or further breach by Provider, without showing or proving actual damage sustained by Customer and without posting a bond. 14.11 Insurance. Provider shall, throughout the performance of its services pursuant to this Agreement, maintain at its sole cost and expense: Comprehensive general liability insurance and broad form contractual insurance (including automobile liability insurance and broad form contractual coverage) with minimum limits of $1,000,000 combined single limit per occurrence, protecting Provider and Customer from claims for loss or damage to property or loss, damage or injury to persons occurring from any cause whatsoever that may arise from or in connection with the performance of Provider's services under this Agreement or from or out of any negligent act of omission of Provider, its officers, directors and employees; and worker's compensation insurance as required by applicable law. 14.12 Entire Agreement. This Agreement, including the Exhibits attached hereto, sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. It may be changed only by a writing signed by both parties. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein. IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement as of the date first written above. PROVIDER: CUSTOMER: By: _____ By: _____ Title: _____ Title: _____ Address: _____ Address: _____ Fax: _____ Fax: _____ EXHIBIT A Services and Fees CONTENT All Content should be provided to Provider by Customer in the formats specified below: All text shall be provided in [ASCII, RTF, PageMaker, WordPerfect, Word, PDF, or HTML]. All graphics shall be provided in [TIFF, GIF, JPEG, or PMP format]. WEBSITE The Website shall not include any Provider Tools except for the following specified below: PLATFORM REQUIREMENTS The Work Product and Provider Tools provided to Customer by Provider shall be compatible with the following browser(s): (e.g. Netscape, MS Internet Explorer, AOL, Lynx]. [DESCRIBE WHICH VERSIONS AND HOW THESE STANDARDS WILL BE UPDATED FOR FUTURE VERSIONS] The Work Product shall be implemented for a _____ server running on the following server software _____. SERVICES For the Design Fee, Provider shall provide the following services in accordance with the Milestone Delivery Schedule below. Examples include: 1. Agreement on site goals 2. Provider and Customer agree on list of items to be included in Website, sorted into topical categories 3. Provider prepares Website storyboard, including navigation scheme 4. Provider prepares design parameters for pages 5. Customer reviews and tests prototype Design 6. Provider and Customer specifies changes to the prototype that are required to conform to Specifications and/or to address issues not contemplated by Specifications 7. Provider resubmits revised prototype 8. Provider develops Style Guide 9. Provider makes final version of Work Product available on Shadow Site 10. Customer accepts final version of Work Product For the monthly hosting fee, Provider shall provide the following services: [Examples include: ongoing HTML markups; content edits including CGI modification; load balancing; server maintenance; hardware, software and system/address re-configuration; normal_5fdf1e034b9cb.pdf foreboziwhe vectejufuce. Dasa levels provided by Provider; transaction software to process transactions on-line, storage space on the server and 24 hours, no much); secure access to Website to monitor performance; access to telecommunications software, Website analysis/tracking software, etc. (Be specific).] FEES * Design fee: _____ * Monthly web-hosting fee: _____ * Maximum per-hour charge: _____ * Other charges: _____ TERM _____ months from the Effective Date. PROJECT LIAISONS Provider Liaison: _____ Customer Liaison: _____ DOMAIN NAME EXHIBIT B Website Specifications 1. The graphics used in Customer's Website shall be in [specify format]. 2. No item in the Website shall exceed ___ pixels in width. 3. Each page shall have the following initial "body" statement: _____. 4. Provider shall develop the Website to project the highest professional image. Provider shall not include any links to other sites without Customer's prior written consent. 5. The maximum size for any page shall be _____, the average size of any page shall be _____, and the user shall have the option to select a low-graphics version of the Website to minimize download time. 6. [Include other specifications required by Customer].