

APPENDIX - TERMS AND CONDITIONS

BACKGROUND

Online electronic approval of a project estimate ("Proposal") indicates the acceptance of the terms and conditions set forth in this agreement ("Agreement") by an authorized representative of the client entity ("Client").

1. OWNERSHIP OF INTELLECTUAL PROPERTY

A. Client shall own all right, title and interest in and to any and all Deliverables (as defined in the Proposal), project descriptions and specifications (including any copyrights therein) which may be included in Deliverables. Vendor and Client expressly agree that the work performed by Vendor hereunder shall be work made for hire to the maximum extended permitted by the United States Copyright Act, and that Client shall be the exclusive owner of all right, title and interest in and to the Deliverables hereunder, including any and all ideas, inventions and works of authorship (including developments, innovations and improvements to existing Client products or confidential information) conceived or made by Vendor alone or with others in the course of Vendor's engagement hereunder, together with any and all copyrights, trade secret rights, patents and other proprietary rights therein, whether now known or hereafter to become known, for the respective maximum terms of protection available throughout the world (the "Client Intellectual Property"). In the event that all the foregoing right, title and interest do not vest automatically in Client, Vendor hereby irrevocably transfers, sells and assigns to Client, its successors and assigns, all such right, title and interest (including any and all copyrights, trade secret rights, patents and other proprietary rights therein). Vendor agrees to execute such other documents as Client may reasonably request from time to time to confirm such transfer of right, title and interest, including any short form assignment of copyright, patent or other proprietary rights, and such other documents concerning the work performed hereunder as Client may deem desirable to file with any copyright, patent or other proprietary rights authority in the world.

B. Client hereby authorizes Vendor the right to use its name, trademarks, service marks, trade names and logos (collectively "Marks") in news releases, case studies, articles, brochures, marketing materials, advertisements, customer testimonials and other publicity or promotions in connection with Client's engagement of Vendor (collectively, "Marketing Materials"). In connection therewith, Client grants to Vendor a limited, nonexclusive, nontransferable, nonsublicenseable license to use Client's Marks for the purposes contemplated by this Section. All uses of the Marks shall be in accordance with the Mark guidelines provided by Client from time to time. Nothing contained herein shall give Vendor any interest in Client's Marks. Vendor shall not take any action that would impair the value of, or goodwill associated with, Client's Marks and, as between the parties, all uses of Client's Marks shall inure to the benefit of Client.

2. CONFIDENTIAL INFORMATION

A. All information relating to Client that a reasonable person would believe to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Vendor and will not be disclosed or used by Vendor except to the extent that such disclosure or use is reasonably necessary to the performance of the Deliverables; provided that such party receiving the information are bound by confidentiality obligations no less restrictive than those contained herein.

B. All information relating to Vendor that a reasonable person would believe to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Client and will not be disclosed or used by Client except to the extent that such disclosure or use is reasonably necessary to the performance of Client's duties and obligations under this Agreement; provided that such party receiving the information are bound by confidentiality obligations no less restrictive than those contained herein.

C. These obligations of confidentiality will extend for a period of one (1) year after the termination of this Agreement, but will not apply with respect to information that (a) the receiving party can demonstrate is independently developed by the parties without reference to the other party's confidential information, (b) lawfully becomes a part of the public domain, or (c) the receiving party can demonstrate was information of which the parties gained knowledge or possession free of any confidentiality obligation.

3. WARRANTY AND DISCLAIMER

A. Vendor represents, warrants and covenants that (a) the Deliverables will be provided in a workmanlike manner and in conformity with generally

prevailing industry standards, and (b) and will conform with the specifications set forth in the Proposal.

B. Vendor further represents and warrants that: (a) it shall take commercially reasonable steps to ensure the Deliverables are free from viruses, disabling programming codes, instruction or other such items that may interfere with or adversely affect the Deliverables or the web site, (b) it has all necessary rights in the intellectual property licensed or assigned to Client under this Agreement, and has the power and authority to grant to Client the rights contemplated hereunder, free and clear of any and all security interests, liens, claims, charges or encumbrances, (c) the Deliverables, as delivered by Vendor, and the use thereof by Client, will not infringe upon or violate any applicable laws or regulations or any rights of third parties, including, without limitation, laws, regulations and rights concerning infringement or misappropriation of such party's intellectual property rights.

C. Client warrants and represents that it is the rightful owner or licensee of all content that it may provide to Vendor for implementation on the web site. D. THE WARRANTIES CONTAINED IN THIS SECTION AND THE Proposal, IF ANY, ARE EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

4. LIMITATION OF REMEDIES

Client's sole and exclusive remedy for any claim against Vendor with respect to a breach of Section 3(A) will be the correction by Vendor of any material defects or deficiencies therein of which Client notifies Vendor in writing within thirty (30) days after the completion of the Deliverables. In the event Vendor is unable to correct any material defects or deficiencies to Client's reasonable satisfaction, Vendor shall reimburse Client for all fees paid related to such Deliverables. In the absence of any such notice, the Deliverables will be deemed satisfactory to and accepted by Client. Payment or use of the web site or the Deliverables (as defined in the Proposal) shall in no way preclude Client's ability to assert a warranty claim within the warranty period.

5. LIMITATION OF LIABILITY

In no event will either party be liable for any loss of profit or revenue by the other party, or for any other consequential, incidental, indirect or economic damages incurred or suffered by the other party arising as a result of or related to this Agreement, whether in contract, tort or otherwise, even if such party has advised of the possibility of such loss or damages. The parties further agree that the total liability of either party for all claims of any kind arising as a result of or related to this Agreement, or to any act or omission of such party, whether in contract, tort or otherwise, will not exceed an amount equal to the amount actually paid by Client to Vendor for the Deliverables.

6. INDEMNIFICATION

A. Client will indemnify and hold Vendor harmless from and against any claims by third parties, including all costs, expenses and attorneys' fees incurred ("Damages"), arising out of or in conjunction with (i) Client's performance under or breach of any obligation or agreement of this Agreement, and (ii) any actual or threatened claim that the content provided by Client to Vendor infringe any intellectual property, including, but not limited to, infringement of any copyright, trademark, patent or trade secret made against Vendor by any third party.

B. Vendor shall indemnify, defend, and hold Client harmless from, and against any and all third party Damages arising out of or resulting from (i) Vendor's performance or breach of any obligation or agreement of Vendor under this Agreement, (ii) any misrepresentation made by Vendor in this Agreement, or (iii) any actual or threatened claim that the Deliverables or the Deliverables infringe any intellectual property, including, but not limited to, infringement of any copyright, trademark, patent or trade secret made against Client by any third party.

7. RELATION OF PARTIES

The performance by Vendor of its duties and obligations under this Agreement will be that of an independent contractor, and nothing herein will create or imply an agency relationship between Vendor and Client, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

8. EMPLOYEE SOLICITATION

During the period of this Agreement and for twelve (12) months thereafter, neither party will solicit, directly or indirectly, the employment of any employee, former employee, subcontractor, or former subcontractor of the other party that (a) with respect to Vendor, performed the Deliverables for Client, or (b) with respect to Client, oversaw the performance of the Deliverables. The terms "former employee" and "former subcontractor" will include only those employees or subcontractors of either party who were employed or utilized by that party on the Effective Date of this Agreement. Both parties agree that nothing contained herein shall prohibit the other party from employing general recruiting strategies, such as placement of advertisements, posting of positions on either party's web sites and other similar methods.

9. TERMINATION

Either Party may terminate any project covered by a Proposal with at least 10 days' written notice to the other Party. Unless otherwise agreed to in writing by the Parties, Client shall, within 30 days of the date of termination, pay Vendor for all work performed up to the date of termination, based either on the quoted price per deliverable in the Proposal or, if no such definition was made, based on Vendor's standard hourly rate of \$125, plus reimbursement for any project expenses. If monies paid by Client to Vendor under the Proposal exceed the amount due to Vendor under this Agreement, Vendor shall refund the difference to Client within 30 days of the date of termination.

10. FAILURE TO PAY

If Client fails to pay any invoice within 60 days of due date, Vendor shall have the right to withhold further work. Further, if Client fails to pay any website hosting services invoice within 90 days of due date, Vendor may disable the website for which the hosting fees apply until all such invoices are paid.

11. NONASSIGNMENT; SUCCESSORS; THIRD PARTY BENEFICIARIES

Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party except in cases of merger or any person or entity acquiring all or substantially all of that party's assets or stock. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein. Nothing in this Agreement shall be deemed to create any rights in third parties or create any obligations of a party to such third parties.

12. ARBITRATION

Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. The parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of the State of California, without regard to the state's conflict of law principles. The arbitration will be held in Orange County, California. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement and the enforcement of this agreement to arbitrate. Judgment on any award rendered by the arbitrator may be entered in any Court of competent jurisdiction.

13. SEVERABILITY

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

14. FORCE MAJEURE

If either party is prevented from complying, either totally or in part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, computer virus, war, accident, or other acts of God, then upon written notice to the other party, the requirements of this Agreement, or the affected provisions hereof to the extent affected, shall be suspended during the period of such disability. During such period, the party not prevented from complying may seek to have its needs (which would otherwise be met hereunder) met by the other without liability hereunder. The party prevented from complying shall make all reasonable efforts to remove such disability within ten (10) days of giving such notice and the party not prevented from complying pursuant to this Section may terminate

this Agreement, without liability, upon expiration of such ten (10) day period. However, Vendor agrees to use commercially reasonable efforts to protect the Deliverables, information and the Deliverables it has created for Client from any force majeure event including insuring the appropriate information is backed-up and stored at a safe site on a reasonable basis to help protect from such unforeseen events.

15. NO WAIVER

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

16. NOTICES

Any notice or other communication which may be permitted or required under this Agreement shall be delivered personally, or by facsimile or other electronic means, or sent by United States registered or certified mail, postage prepaid, addressed set forth in the introductory paragraph or to any other address as either party may designate by notice to the other party. Notice given by facsimile or other electronic means shall promptly be confirmed by registered or certified mail or overnight carrier shall be deemed to be received upon verification that such facsimile was received by the other party. Notice by registered or certified mail or overnight carrier and shall be deemed to be received two (2) days following the date of mailing, provided such notice is properly addressed and sufficient postage is affixed thereto, or the actual date of receipt, whichever is earlier.

17. COUNTERPARTS; ELECTRONIC SIGNATURES

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. For purposes of this Agreement, signatures delivered by facsimile transmission or other electronic means will be treated in all manner and respects as originals.