



Website Development Agreement / Monthly Service Agreement

The Website Development (WDA) outlines the terms of service to build your website, including features and payment terms. The Monthly Service Agreement (MSA) (if applicable) is a month-to-month agreement. There are no termination fees; however, we do require a **60-day notice** for cancellation on monthly services. All agreements automatically renew on a month-to-month basis.

ORDER

We have listed most of services below so that you can see what we offer. This agreement covers all work to be done on the initial order plus future orders. Please initial **only** the selected services you wish to order **today** (Order), then sign, date and initial the agreement where indicated.

[PAYMENT SECTION INDICATING AGREED PAYMENT TERMS AND AUTHORIZATION TO USE SELECTED METHOD]

PAYMENT

- I prefer to pay by **check** (mail check – does not apply to monthly services)
 I prefer to pay by **bank draft ACH** (form below)
 I prefer to pay by **credit card** (form below)

* Monthly services require payment via ACH or Credit Card – no checks accepted for monthly services.

** All services paid for up front for 1-year receive 2 months free (ex. Yearly hosting = \$450)

BANK DRAFT AUTHORIZATION (ACH / E-check) – Our Preferred Method

Bank Routing Number

Bank Account Number

Bank Name

Bank Address

Authorized Signature

Type (Checking / Savings)

Date to Be Drafted

This method is an “e-check.” Portside Marketing, LLC will setup ACH payments for the specified amount in this agreement on the date agreed. No other drafts will be made, at any time, without your express written permission for monthly charges, or oral permission for one-time charges. Bank drafts scheduled on Saturdays, Sundays or holidays may be processed before the draft date per bank terms. This is outside of our control. Cancellation periods are outlined in this document. Cancellation must be received in writing.

CREDIT CARD AUTHORIZATION

Credit Card Number

Expires

Security Code #

Name on Card

Phone

Customer Billing Address (if different from above)

City, State Zip (if different from above)

Authorized Signature

Date

Payment made via credit card are final. By signing above, **customer agrees to remedy any disputed payments or refund disputes without using credit card chargebacks.** Authorized refunds will be paid using the same method in which they were paid. For credit cards, this means any refund or partial refund will be returned to the card used. A refund acknowledgement form will be executed prior to any refunds being made. Disputes shall be subject to the agreement below. Arbitration is required.

Project Timeline & Payment Schedule

Schedule subject to change due to scope changes (+/-). We often run ahead of schedule on projects if scope does not change. We will communicate any schedule changes. Timely reviews and feedback are critical to stay on/ahead of schedule for your project.

Milestone	Target Date	Amount Due

Payment Options: Check, Bank Draft or Credit Card
(Monthly payments must be setup as Bank Draft or CC)
PAYMENT SECTION MUST BE COMPLETED (ABOVE)

Development will be constructed on our development server and the completed site will be copied to the final hosting location specified by the customer after final payment has been made.

PAYMENTS

If project amount is **\$5000 or less**, payment is **due in full** before start date unless otherwise indicated. All printing & graphic work must be paid in full at time of order.

If project amount is **greater than \$5000**, all payments must be made via check. No credit cards will be accepted on projects over \$5000 unless otherwise agreed upon before project start.

FINAL PAYMENT must be paid **on completion or in 30 days** from start of project, whichever comes first unless otherwise specified in the project agreement/schedule.

Website Development Agreement

This WEBSITE DEVELOPMENT AGREEMENT ("WDA" or "Agreement") / MONTHLY SERVICE AGREEMENT ("MSA" or "Agreement") is an agreement between Portside Marketing, LLC ("Company") and the party set forth in the Website Development Agreement (WDA) above ("Customer" or "you") incorporated herein by this reference (together with any subsequent order forms submitted by Customer, the "Order") and applies to the purchase of all services ordered by Customer on the Order (collectively, the "Services"). The parties understand, acknowledge and agree that this is an agreement, which is being entered into in conjunction with the Order specified above.

PLEASE READ THIS AGREEMENT CAREFULLY.

BY SIGNING UP FOR THE SERVICES CREATES A CONTRACT BETWEEN CUSTOMER AND COMPANY, CONSISTING OF THE ORDER, THE APPLICABLE SERVICE DESCRIPTION AND THIS AGREEMENT AND YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING COMPANY'S USAGE POLICIES. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

1. TERM AND TERMINATION

A. Term of Agreement – Monthly Service Agreement (if applicable). This Agreement shall be effective as of the date set forth on the Order. If a monthly service is selected, this Agreement shall be effective as of the date set forth on the Order and shall remain in force until Company receives **written notice** (emails or faxes, or phone calls are insufficient) of cancellation of the Monthly Service Agreement (MSA). Notice must be given in writing, **60 days in advance**. The only acceptable form of cancellation is in writing (emails or faxes, or phone calls are insufficient) via USPS delivered to Portside Marketing, LLC, 1011 Surrey Ln, Bldg 200, Flower Mound, TX 75022. If the website design fee has been divided across a (1) year term and the monthly services are cancelled prior to full payment of website design services, the balance shall be due upon cancellation in full of all outstanding website design fees, including but not limited to hosting. All agreements automatically renew on a month-to-month basis. The MSA requires a **60-day written notice of cancellation**. Company cannot guarantee the Delivery Date but will use reasonable efforts to perform the Services in an efficient and timely manner. Completion times are dependent upon all parties maintaining timely communication and delivering requested content, reviews and approvals in a timely manner.

B. Termination. This Agreement may be terminated by either party upon written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice. Termination does not relieve customer of the responsibility to pay for any services that were deemed delivered in good faith. This Agreement may be terminated by Company (i) immediately if Customer fails to pay any fees hereunder; or (ii) if Customer fails to cooperate with Company or hinders Company's ability to perform the Services hereunder.

2. COMPANY'S AND CUSTOMER'S RESPONSIBILITIES

A. Scope of Work. Customer hereby retains the services of Company to design the Website for Customer in accordance with the package selected in the Monthly Service Agreement section above.

B. Changes. Changes to this Agreement, the Order or to any of the specifications of the Website or monthly services shall become effective only when a **written change request is executed by the Customer and Company** ("Change Order"). The only acceptable form of changes to this agreement is in writing via USPS delivered to Portside Marketing, LLC, 1011 Surrey Ln, Bldg 200, Flower Mound, TX 75022. Company agrees to notify Customer promptly of any factor, occurrence, or event coming to its attention that may affect Company's ability to meet the requirements of this Agreement, or that is likely to occasion any material delay in the Services. In the event of a conflict between the terms of this Agreement and a Change Order, the terms of this Agreement shall govern.

C. Customer's Responsibilities. Customer agrees to perform all tasks assigned to Customer as set forth in this Agreement or a Change Order, and to provide all assistance and cooperation to Company in order to complete the Order timely and efficiently. Company shall not be deemed in breach of this Agreement, the Services, a Change Order, or any milestone in the event Company's failure to meet its responsibilities and time schedules is caused by Customer's failure to meet (or delay in) its responsibilities and time schedules set forth herein, a Change Order, or this

Agreement. In the event of any such failure or delay by Customer (i) all of Company's time frames, milestones, and/or deadlines shall be extended as necessary; and (ii) Customer shall continue to make timely payments to Company as set forth in this Agreement and any Change Order(s) as if all time frames, schedules, or deadlines had been completed by Company. Customer shall be responsible for making, at its own expense, any changes or additions to Customer's current systems, software, and hardware that may be required to support operation of the Website. Unless otherwise contracted with Company or reflected in a Change Order, Customer shall be responsible for initially populating and then maintaining any databases on the Website as well as providing all content for the Website. With the execution of a Change Order specifically asking Company to assess the Customer's systems, software and hardware from time to time, Company may agree to perform this function at normal Company rates.

3. WEBSITE DESIGN

A. Design. The design of the Website shall be in substantial conformity with the material provided to Company by Customer. Website consultation will be provided. Customer will provide direction to Company and deliver content for Website construction in writing. The Customer will supply Website text unless copywriting services have been purchased. Development of web pages will take place on the Customer's established web hosting service with Company if hosting has been selected in the Order. If hosting has not been selected, Company will develop web pages on a Company development server and only transfer site to the 3rd party hosting upon final payment of all fees, including the 3rd party hosting fee. All server technical issues are to be handled by Company unless otherwise noted amongst all parties in writing. Minor updates and changes include only minor modifications to existing pages, images or text as supplied by Customer. This does not include adding features beyond the scope of the Order. Company shall not include, as determined in its sole discretion, any of the following in the Website or in Customer's directory on Company's Web Server: text, graphics, sound, or animations that might be viewed as obscene or any illegal activities; links to other websites that might be viewed as obscene or related in any way to any illegal activities; impressionistic or cartoon-like graphics (unless provided by Customer); invisible text, meta tags (i.e., text that is present only when a "Webcrawler" or other Web indexing tool accesses the Website), or any other type of hidden text, hidden information, hidden graphics, or other hidden materials; or destructive elements or destructive programming of any type.

B. Coordination Steps. Customer understands that submissions for Website development are limited to the number of coordination steps as provided in the Order. Customer is encouraged to provide as much instruction and direction as possible with each submission.

C. Accessibility of Website During Construction. Throughout the construction of the prototype and the final Website, the Website shall be accessible to Customer through a CRM. Until Customer has approved the final Website, none of the Web Pages for Customer's Website will be accessible to end users.

D. Completion Date. Company and the Customer shall work together to complete the Website in a commercially reasonable manner. Customer must supply Company complete text and graphics content for all web pages contracted for within two (2) weeks of the date of the Order unless otherwise noted. If Customer has not submitted complete text and graphics content within three (3) weeks after the Order, an additional continuation fee of ten percent (10%) of the total Order price will also be assessed each month until the Website is published.

E. Copyright to Website. Customer acknowledges, understands and agrees that Company may use its own and/or may purchase third party licenses for products or services that are necessary for Company to design and develop the Website. Such products may include, but are not limited to server-side applications, clip art, "back-end" applications, music, stock images, or any other copyrighted work ("Outside Content") which Company deems necessary to purchase on behalf of Customer to design and develop the Website. Customer further acknowledges and understands that any Outside Content used to design and develop the Website is owned by Company and/or such third parties and cannot be transferred to Customer and is hereby specifically not transferred to Customer and shall remain the property of Company and/or such third parties. Outside content that is owned and/or purchased by Company may be used in the design and/or development of other Websites separate from Customer. Customer and Company agree that upon payment in full of the fees associated with the design and development of the Website, Customer shall own a worldwide right, title, and interest in and to the Website (including, its source code and documentation) (the "Custom Programming"). Customer and Company agree that Company shall retain a worldwide, royalty-free, non-exclusive, transferable, and perpetual right and license to the Custom Programming including, but not limited to, the right to modify, amend, create derivative works, rent, sell, assign, lease, sublicense, or otherwise alter or transfer the Custom Programming. Customer and Company also agree that the design and development of the Website may include source code, documentation, and/or application programs that were previously written or developed by Company and modified to meet Customer's specific requirements (the "Code Content"). Company shall own all worldwide right, title, and interest in and to the Code Content, but shall provide Customer (upon payment in full of the fees associated with the design and development of the Website) a worldwide, royalty-free, non-exclusive, transferable and perpetual right and license to use the Code Content. Company and its subcontractors retain the right to display graphics and other web design elements of the Website as examples of their work in their respective portfolios.

4. MAINTENANCE

This Agreement does not provide Website maintenance unless a Website maintenance plan is purchased. If the Customer or an agent other than Company attempts updating Customer's pages, time to repair web pages will be assessed at an hourly rate. Changes requested by the Customer beyond those limits will be billed at the hourly rates set forth in the Order. This rate shall also govern additional work authorized beyond the maximums specified in the Order for such services as webpage design, editing, modifying product pages and databases in an online store, art, photos, graphics, or any other services.

5. SEARCH ENGINE OPTIMIZATION

A. If Search Engine Optimization services are selected, Company agrees to provide Customer with Search Engine Optimization (hereinafter referred to as SEO) as described in this agreement. SEO will attempt to improve Customer's website ranking of site(s) agreed upon in the Order. Only one (1) domain may be optimized per campaign. Optimization will target key search engines such as Google, Yahoo & Bing.

B. Customer agrees to pay Company the monthly fee indicated in the Order form (initialed to indicate agreement of fee) for provided services. This fee will include making any necessary changes and/or additions to the website if there were significant drops or decreases in rankings during the time of service.

C. The Agreement is serviced on a month-by-month basis. The Customer can cancel the renewal in writing via standard mail services at least 60 days prior to renewal date. The renewal cancellation must be executed in writing via standard mail services (emails or faxes, or phone calls are insufficient). If not cancelled at least 60 days prior to expiration, Customer will be billed for 2-months service upon cancellation to cover labor and out of pocket expenses incurred by Company.

D. SEO services are intended to provide the Customer with higher positioning in selected search engines. SEO services include (but not limited to):

- a. Optimizing the Customer's website or listing (maps) with the keywords stated in this agreement in order to place the Customer's website or listing (maps) on the first page results for the minimum agreed (above) number of terms.
- b. Add or edit html tags, meta tags, alt tags, title attributes, robots tags, and page text as necessary.
- c. Create on and off-site blogs, press releases, articles or content submissions.
- d. Submit customer to citation / listing sites, search engines, social media sites, blogs or forums.
- e. Submit the website to search engines. Continue to submit new pages / content.
- f. Monitor website and listings for placement. Analyze analytics for performance.

E. For the purposes of providing these services, Customer agrees to provide one of the three options below:

Option 1: FTP access to the main site for uploading new pages and making mutually agreed changes in order to achieve and maintain positioning. The Customer must provide the Company with current passwords and User IDs needed to gain remote access to the Customer's web site files via FTP software. The Customer must alert anyone else that has access to the website, that the Company is currently working on those files, and **not to make any non-confirmed changes to the files.**

Any changes to optimized content could result in negative effects to the campaign. Customer agrees to the following restrictions while this agreement is in effect:

- a. The meta-tags or static HTML pages prepared for your website must not be altered in any way.
- b. The meta-tags or static HTML pages prepared for your website must not be removed or deleted from your site for at least the duration of our one-year agreement. Please insure these files are not deleted while maintenance of your website is being carried out.
- c. Page(s) cannot produce pop-ups or under-pops as most search engine spiders do not tolerate pop-ups and thus will not index infected pages.
- d. While spidering your website, if a search engine does not find the promoted pages, your site may lose valuable positioning and/or be removed entirely from that particular search engine. If it is necessary to change the file and/or

folder names relating to the work we completed, please let us know of these changes so we can amend our submission files. This information is crucial for search engine positioning.

e. Our guarantee assumes your website is properly administered/maintained. Extended downtime and/or significant DNS failures inhibit indexing, spidering, and any possibility our work will achieve Page One Placement ranking.

Option 2: Where FTP access is not possible, Customer agrees to provide an email address of a technician who can upload requested changes on a timely basis. However, the Company cannot be held responsible for delays once the technician has been notified of the upload request. A copy of the request will be sent to Customer.

Option 3: The username and password needed to access the Customer website from the Customer control panel.

a. Customer authorizes Company's use of all Customer logos, trademarks, Web site images, etc., for use in creating optimized pages as deemed necessary by the Company for Page One Placement purposes.

b. Customer agrees to provide content in regards to particular keywords as needed by the Company.

c. Company cannot be held responsible if our work is fully or partially overwritten by Customer or any third party.

F. Customer acknowledges the following with respect to services:

a. Company has no control over the policies of search engines with respect to the type of sites and/or content that they accept now or in the future. Customer site may be excluded from any search engine or directory at any time at the sole discretion of the search engine or directory. If the web pages are dropped by any search engine at anytime, the Company will resubmit the web pages and attempt to get them listed back.

b. Due to the competitiveness of some keywords/phrases, ongoing changes in search engine ranking algorithms and other competitive factors, Company does not guarantee #1 positions or consistent first page positions for any particular keyword, phrase or search term. As a particular keywords can be ranked #3 one day, and the very next day be ranked #14, only to reappear the following day back in the #3 position. However, the company will guarantee to keep the Customer's website ranked on Google in some capacity for at least 75% of the duration of this agreement.

c. Occasionally, search engines will stop accepting submissions for an indefinite period of time, but this is very rare.

d. Occasionally, search engines will drop listings for no apparent or predictable reason. Often listings will "reappear" without any additional submissions. Should the listing not reappear, the Company will re-submit the site based on the current policies of the search engine in question.

6. SOCIAL MEDIA

When Social Media is selected or used for SEO services, Company shall provide initial social media setup on various social media websites, along with monthly interaction and activities. Customer shall give Company direction as to the type of content to be used on Customer's behalf. If content approval is required, all approvals will be submitted via email for approval. Delays for approval from Customer shall not negate fees or incur a refund if services are not performed on a timely basis due to such delays. Company shall provide industry-standard activities, including but not limited to writing, sharing and posting content, posting and sharing of images, videos or other content, by Customer or by 3rd party source. Customer grants Company permission to make decisions that Company feels appropriate to build and market Customer brand. Customer grants Company permission to create accounts on behalf of Customer. Customer releases Company from any and all responsibilities or legal action that may arise from online activities on Customer's behalf.

Company shall provide and release all account information, content or data for any account set up on behalf of Customer, including but not limited to content, data, login and password information. Further, Company agrees that all accounts created or managed for Customer are the property of the Customer and as such, shall be surrendered upon request. Company also agrees and acknowledges that Customer owns all content created on behalf of Customer. Customer understands and acknowledges that any proprietary software or code created or owned by Company remains property of Company and upon termination of this agreement, may be removed from Customer assets, such as websites or other online service pages.

7. FEES

A. *Development Fee.* The total price for all work set forth in the Agreement (excluding post-approval modifications not

implemented by Customer) shall be set forth in the Order (the "Development Fee"). This price covers all work for the Order (excluding post-approval modifications not implemented by Customer). Unless otherwise stated in the Order, the Development Fee to Company is due and payable upon placing the Order and Company shall have no obligation to perform any work until payment is received and such funds are cleared from the relevant financial institution. Company's services are "AS-IS, WHERE-IS, WITH ALL FAULTS" and refunds may not be provided for Company's services hereunder.

B. *Project abandonment.* If after repeated attempts to begin, continue, or finalize the delivery of services, Customer fails to participate, or becomes otherwise unresponsive to Company requests for a period of three (3) months, the project may be considered abandoned, and Company may reduce any refund the Customer may otherwise be entitled to hereunder to zero, and Customer will have forfeited all rights to receive any refund for services purchased online or as described in the original Order Form.

8. INDEMNIFICATION

A. *Company Indemnity.* In performing services under this Agreement, Company agrees not to design, develop, or provide to Customer any items that infringe one or more patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy, or other rights of any person or entity. If Company becomes aware of any such possible infringement in the course of performing any work hereunder, Company shall immediately so notify Customer in writing. Company agrees to indemnify, defend, and hold Customer, its officers, directors, members, employees, representatives, agents, and the like harmless for any such alleged or actual infringement and for any liability, debt, or other obligation arising out of or as a result of or relating to (a) the Agreement, (b) the performance of the Agreement, or (c) the Deliverables, other than Customer's responsibilities and Customer Content. This indemnification shall include attorney's fees and expenses, unless Company defends against the allegations using counsel reasonably acceptable to Customer. Company's total liability under this Agreement shall not exceed the amount of the Development Fee derived by Company under this Agreement.

B. *Customer Indemnity.* Customer shall indemnify and hold harmless Company (and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by Company as a result of any claim, judgment, or adjudication against Company related to or arising from (a) any photographs, illustrations, graphics, audio clips, video clips, text, data or any other information, content, display, or material (whether written, graphic, sound, or otherwise) provided by Customer to Company (the "Customer Content"), or (b) a claim that Company's use of the Customer Content infringes the intellectual property rights of a third party. To qualify for such defense and payment, Company must: (i) give Customer prompt written notice of a claim; and (ii) allow Customer to control, and fully cooperate with Customer in, the defense and all related negotiations.

9. REPRESENTATIONS AND WARRANTIES

A. Company makes the following representations and warranties for the benefit of Customer:

a. *No Conflict.* Company represents and warrants that it is under no obligation or restriction that would in any way interfere or conflict with the work to be performed by Company under this Agreement and the Order. Customer understands that Company is currently working on one or more similar projects for other clients. Provided that those projects do not interfere or conflict with Company's obligations under this Agreement, those projects shall not constitute a violation of this provision of the Agreement.

b. *Conformity, Performance, and Compliance.* Company represents and warrants that (1) all Deliverables shall be prepared in a workmanlike manner and with professional diligence and skill; (2) all Deliverables will function under standard HTML conventions; (3) all Deliverables will conform to the specifications and functions set forth in this Agreement; and (4) Company will perform all work called for by this Agreement in compliance with applicable laws. Company will repair any Deliverable that does not meet this warranty within a reasonable period of time if the defect affects the usability of Customer's Website, and otherwise will repair the defect within 24 hours, said repairs to be free of charge to Customer. This warranty shall extend for the life of this Agreement. This warranty does not cover links that change over time, pages that become obsolete over time, content that becomes outdated over time, or other changes that do not result from any error on the part of Company.

c. *Disclaimer of All Other Warranties.* COMPANY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN ITS WEB PAGES OR THE WEBSITE WILL MEET THE CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE WEB PAGES WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE WEB PAGES AND WEBSITE IS WITH CUSTOMER. EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, DEVELOPER PROVIDES ITS

SERVICES "AS IS" AND WITHOUT WARRANTY OF ANY KIND. THE PARTIES AGREE THAT (A) THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY EACH PARTY, AND (B) EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THIS AGREEMENT, PERFORMANCE OR INABILITY TO PERFORM UNDER THIS AGREEMENT, THE CONTENT, AND EACH PARTY'S COMPUTING AND DISTRIBUTION SYSTEM. IF ANY PROVISION OF THIS AGREEMENT SHALL BE UNLAWFUL, VOID, OR FOR ANY REASON UNENFORCEABLE, THEN THAT PROVISION SHALL BE DEEMED SEVERABLE FROM THIS AGREEMENT AND SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF ANY REMAINING PROVISIONS.

d. *Limitation of Liability.* IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, LOST PROFITS, WHETHER OR NOT FORESEEABLE OR ALLEGED TO BE BASED ON BREACH OF WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY, ARISING UNDER THIS AGREEMENT, LOSS OF DATA, OR ANY PERFORMANCE UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. THE MAXIMUM REMEDY AVAILABLE TO EITHER PARTY IS ANY AMOUNT PAID BY CUSTOMER HEREUNDER. COMPANY MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY PRODUCTS, THIRD PARTY CONTENT OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD PARTIES.

B. Customer makes the following representations and warranties for the benefit of Company:

a. Customer represents to Company and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Company for inclusion in the Website are owned by Customer, or that Customer has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend Company and its subcontractors from any claim or suit arising from the use of such elements furnished by Customer.

b. From time to time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. Customer agrees that the client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend Company and its subcontractors from any claim, suit, penalty, tax, or tariff arising from Customer's exercise of Internet electronic commerce.

C. *Confidentiality.* The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "Proprietary or Confidential Information" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) is subject to disclosure under court order or other lawful process. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party's proprietary or confidential information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the other party other than as specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this Agreement, Company and Customer acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of three (3) years from the Effective Date.

10. FORCE MAJEURE

Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

11. RELATIONSHIP OF PARTIES

A. *Independent Contractor.* Company, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. Company shall be solely responsible for and shall hold Customer harmless for any and all claims for taxes, fees, or costs, including but not limited to withholding, income tax, FICA, and workers' compensation.

B. *No Agency.* Customer does not undertake by this Agreement, the Order or otherwise to perform any obligation of Company, whether by regulation or contract. In no way is Company to be construed as the agent or to be acting as the agent of Customer in any respect, any other provisions of this Agreement notwithstanding.

12. NOTICE AND PAYMENT

A. Any notice required to be given under this Agreement shall be in writing (emails or faxes, or phone calls are insufficient) and delivered personally to the other designated party at the addresses listed in the Order mailed by certified, registered or express mail, return receipt requested or by Federal Express.

B. Either party may change its address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

13. JURISDICTION/DISPUTES

This Agreement shall be governed in accordance with the laws of the State of Texas. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Texas including the federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

14. AGREEMENT BINDING ON SUCCESSORS

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

15. ASSIGNABILITY

Customer may not assign this Agreement or the rights and obligations hereunder to any third party without the prior express written approval of Company. Company reserves the right to assign subcontractors as needed to this project to ensure on-time completion.

16. WAIVER

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

17. SEVERABILITY

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

18. INTEGRATION

This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

19. NO INFERENCE AGAINST AUTHOR

No provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.

20. DISPUTES

Customer and Company agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through negotiation. Should the parties fail to resolve any such disagreement within ten (10) days, any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, shall be submitted by either party to arbitration in Denton, Texas and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by one arbitrator, who shall be (a) selected in the sole discretion of the American Arbitration Association administrator and (b) a licensed attorney with at least ten (10) years experience in the practice of law and at least five (5) years experience in the negotiation of technology contracts or litigation of technology disputes. The arbitrator shall have the power to enter any award that could be entered by a judge of the state courts of Texas sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the State of Texas or any other applicable law. The arbitrator must issue his or her resolution of any dispute within thirty (30) days of the date the dispute is submitted for arbitration. The written decision of the arbitrator shall be final and binding and enforceable in any court having jurisdiction over the parties and the subject matter of the arbitration. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court.

21. READ AND UNDERSTOOD

Each Party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms and conditions.

22. DULY AUTHORIZED REPRESENTATIVE

If this Agreement is executed then each Party warrants that their representative whose signature appears on such signature pages is the duly authorized by all necessary and appropriate corporate actions to execute this Agreement.

23. ENFORCEMENT

If any part of this agreement is ruled unenforceable, the remainder of the agreement shall remain in full force and effect.

The effective date of this agreement is on the date this agreement is signed and submitted.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE WEBSITE DEVELOPMENT AGREEMENT]

This Agreement contains all the terms and a service offered and constitutes the entire agreement. All prior and contemporaneous discussions and/or understandings and even future discussions and/or understandings after this Agreement shall be hereby nullified and given no effect. The parties explicitly intend for this Agreement to constitute all of the terms and conditions. Both parties agree and hereby affirm that they have no agreements or understandings other than those in this Agreement. Portside Marketing makes no guarantees as to revenue, sales, or website security. Portside Marketing will not be bound by any additional or different terms even if such statements were made by Portside Marketing or its representatives prior, contemporaneous or after this Agreement was signed. Both parties agree that this Agreement cannot be changed unless that change is in writing and signed by both parties (email or faxes, or phone calls are insufficient).

By signing this agreement, I have read and agree to the *terms* and conditions set out herein. **All work that is outside of the scope of work detailed in the Order will be billed at an hourly rate of \$125 per hour.** All work outside Scope of Work is at customer's discretion.

By: Customer (Signature)

By: Company (Signature)

Authorized Representative (printed)

Authorized Representative (printed)

Title

Title

Date

Date