**WEB SITE DESIGN, HOSTING AND**

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COMMERCIAL SERVICES AGREEMENT

The effective date of this Web Site Design, Hosting and Commercial Services Agreement (the “Agreement”) is [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Company"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [SERVICE PROVIDER]** (the "Service Provider"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

For good and valuable consideration, the receipt and legal sufficiency of which are hereby expressly acknowledged, the parties hereto agree as follows:

WHEREAS, Service Provider designs web sites for use on the Internet's World Wide Web, provides web site hosting services and provides on-line interactive ordering and payment services;

WHEREAS, Client desires Service Provider to design a web site for Client, to provide web site hosting services to Client and to provide on-line ordering and payment information forwarding services;

WHEREAS Service Provider desires to retain all rights, title and interest in and to all software, documentation, derivative works and other intellectual property developed, designed, created or contributed by Service Provider pursuant to this Agreement, excluding Client's domain name, and excluding the graphics and data supplied by Client; and

WHEREAS, Client shall pay Service Provider an hourly fee for helping to conceptualise Client's web site, a fixed fee for developing Client's web site, a monthly fee for hosting Client's web site and a royalty for Service Provider's Forwarding Of Client's Customer Order And Payment Information;

NOW, THEREFORE, the parties agree as follows:

1. **DEFINITIONS**

"Alpha Version" means the first test system of the Client's Web Site, which is tested on a computer that is not connected to the Internet.

"Agreement" means this written agreement Between Service Provider and Client.

"Beta Version" means the second test system of the Client's Web Site, which is tested through the Internet by Client.

"Bug" means an error in a Web Site that causes repeated and repeatable malfunctions.

"[CODE, E.G. JAVA, .NET, ETC]" means the standard method of writing computer code to enable an interactive computer programme on one Internet server to communicate with users located at remote Internet servers.

“Commercial Service Provider" or "Service Provider" means a Web Host, as defined below that also processes orders and payments by Internet users on behalf of third-party Web Site owners.

"Cookie" means a file stored on the user's computer into which data which is transparently transmitted by a Web Site regarding a variety of information.

"Derivative Work" means any modifications made to any computer source code, object code, [PROGRAMMING CODE] code or HTML code.

"Domain Name" or "Name" is the alphanumeric name associated with Client's web site, web pages or electronic mail.

"Electronic Mail" or "E-Mail" means any communication transmitted via the Internet which is stored in the recipient's e-mail box.

"Hour" means one hour spent by one developer.

"HTML Code" means hypertext mark-up language, which is the language commonly used for developing the appearance of Web Sites.

"Intellectual Property Rights" means:

* Rights in any patent, copyright, trademark, trade dress, and trade name;
* Related registrations and applications for registration; and
* Trade secrets, moral rights and goodwill.

"Internet" means the global computer network comprising interconnected networks using standard Protocols.

"Internet Service Provider" or "ISP" means an entity that enables the uploading and downloading of data between remote computers and the Internet.

"Kilobytes *per se*cond" or "Kbps" means [NUMBER] bytes of data transmitted in one second.

"Project Manager" means one of Client's employees who shall be deemed as Client's liaison with Service Provider, and who shall have the power to act as Client's project manager in order to make ongoing decisions under this Agreement which are binding upon Client.

"Protocols" means a set of rules that regulate the way data is transmitted between computers.

"Robot" or "Spider" means an automated device used by a searching service to gather pieces of information about Web Sites.

"Web Page" means each individual screen display contained in Client's Web Site.

"Web Site" means all Web Pages and domain names associated with Client and its products or services, and which are stored on Service Provider's Internet server computer.

"Web Site Hosting Service Provider" or "Web Host" means an entity that stores third-party Web Sites on its Internet server computer receives or stores commands or data transmitted by Internet users, transmits Web Page data to users' Internet addresses, and performs related maintenance.

"World Wide Web", or "WWW", is a subset of the Internet and is a common system for browsing Internet Web Sites.

1. **WEB SITE DEVELOPMENT**

**2.1 Design**

* + 1. Preliminary Specification Sheet. The parties recognise that Client has previously provided to Service Provider a specification sheet which graphically and textually illustrates all Web Pages that Client wishes to incorporate into its Web Site - including images and graphics -, the functionality Client desires between multiple Web Pages, and the functionality Client desires between each Web Page and users. A true and correct copy of the specification sheet is attached hereto as "Attachment [SPECIFY]".
    2. Modified Specification Sheets. Service Provider shall prepare a First Modified Specification Sheet by reviewing Client's Preliminary Specification Sheet, consulting with Client in order to make suggested changes and improvements, and drafting a First Modified Specification Sheet. Client shall inspect Service Provider's First Modified Specification Sheet, and shall approve it, reject it or make additional changes. [Where time is of the essence, the following sentence should be added:
    3. The parties expressly recognise that time is of the essence, and expressly agree that each successive Modified Specification Sheet shall be drafted by each party and delivered to the other party within no more than [NUMBER] business days. Client and/or Service Provider may make additional subsequent changes, and each resulting Modified Specification Sheet shall be sequentially numbered, and shall not become a Final Specification Sheet in the absence of the parties' mutual written assent. Service Provider shall assist Client with the preparation of Modified Specification Sheets, and Client shall compensate Service Provider at the rate of [choose from the range of: [AMOUNT] to [AMOUNT] per Hour for Service Provider's preparation of Modified Specification Sheets].
    4. Final Specification Sheet. When the parties have inscribed any Modified Specification Sheet with the term "Final Specification Sheet", and the parties have signed it, then Service Provider shall undertake to develop the desired Web Site according to the specifications contained therein. Client hereby expressly represents that by signing the Final Specification Sheet, the specifications contained therein shall be deemed complete and accurate.

**2.2 Coding**

* + 1. Method. Service Provider shall create the code underlying Client's Web Site in accordance with the Final Specification Sheet, Protocols and [PROGRAMMING CODE].
    2. Project Management. The parties recognise that Client's participation in all phases of the development of the Web Site is essential. As such, Project Manager shall, in best faith, work with Service Provider to complete the project on schedule.
    3. Pre- Final Version Modifications
       1. Modification Method. During the coding and testing process, Service Provider or Client may propose modifications to the Client's Web Site in writing. Any proposed modification shall be signed by both parties prior to the performance of any work by Service Provider on such proposed modification.
       2. Additional Development Time. Written modifications shall expressly include an additional amount of time for the development of the Client's Web Site, and the delivery schedule shall be delayed by the same amount of time. When such modifications are necessary for Service Provider to continue working on the development project, and when no other coding can be done during the interim, the delivery schedule shall also be delayed by the amount of time between when such modifications are first proposed until the time when they are signed by both parties.
       3. No Liability Against Service Provider for Delay. The types of delay enumerated in [SPECIFY] above, shall not result in the imposition of any set-of liquidated damages, penalty or other liability against Service Provider during that additional period of additional development time.
  1. **Schedule**
     1. Alpha Version

2.3.1.1 Delivery. Service Provider shall provide an Alpha Version of Client's Web Site for Client's testing at Service Provider's facilities within [choose from the range of: [NUMBER] to [NUMBER] days after delivery of the Final Specification Sheet by Client to Service Provider.

* + - 1. Testing. Client shall perform complete testing of all aspects of the Alpha Version within [choose from the range of: [NUMBER] to [NUMBER]] days after Service Provider's provision of the Alpha Version.
      2. Acceptance. Client shall indicate its acceptance of the Alpha Version in writing, or Client shall make suggested, written modifications which shall be incorporated by Service Provider into Client's Web Site according to the terms of [SPECIFY] above. CLIENT EXPRESSLY WAIVES ANY RIGHT TO REVOKE ACCEPTANCE.
    1. Beta Version

2.3.2.1 Delivery. Service Provider shall host on its Internet server the Beta Version of Client's Web Site for Client's testing over the Internet within [choose from the range of: [NUMBER] to [NUMBER] days after Client's acceptance of the Alpha Version.

* + - 1. Testing. Client shall perform complete testing of all aspects of the Beta Version within [choose from the range of: [NUMBER] to [NUMBER] days after Service Provider's provision of the Beta Version.
      2. Final Acceptance. Client shall indicate its acceptance of the Beta Version in writing, or Client shall make suggested, written modifications which shall be incorporated by Service Provider into Client's Web Site according to the terms of [SPECIFY] above. CLIENT EXPRESSLY WAIVES ANY RIGHT TO REVOKE ACCEPTANCE.
    1. Final Version. Service Provider shall deliver Client's completed Web Site within [choose from the range of: [NUMBER] to [NUMBER] days after Client's Final Acceptance.
  1. **Deliverables**

Service Provider's delivery of Client's Final Version shall consist of Service Provider's posting of Client's Web to Service Provider's Internet server.

* 1. **Fees and Payment**

Client agrees to pay to Service Provider the amount of [choose from the range of: [AMOUNT] to [AMOUNT] for any and all work per-formed by Service Provider between the time of Client's delivery of the Final Specification Sheet to Service Provider and until the time of Final Acceptance by Client (the "Design Fee"). One-half of this amount shall be delivered by Client to Service Provider contemporaneously with Client's endorsement of this Agreement, and one-half shall be delivered by Client to Service Provider contemporaneously with Final Acceptance. The Design Fee is not a consideration for any other services provided by Service Provider to Client, and additional fees shall be paid by Client to Service Provider for other services.

* 1. **Modifications Subsequent to Final Acceptance**
     1. Method. After Final Acceptance, Client may desire to modify the Web Site in order to fix Bugs, to conform to the Final Specification Sheet, or to enhance its appeal. Client shall submit its desired modifications in writing to Service Provider, and the parties shall sign the written modification prior to the performance of any modification work by Service Provider.
     2. Time. For a period of [choose from the range of: [NUMBER] to [NUMBER] months following Final Acceptance, Service Provider shall make necessary and reasonable modifications to Client's Web Site.
     3. Additional Fees
        1. Fixing Bugs. Where Client's desired post-Final Acceptance modifications are to fix Bugs, Service Provider shall provide up to [choose from the range of: [NUMBER] to [NUMBER] Hours of development time at no additional charge]. Additional development work shall be performed by Service Provider, and Client shall pay Service Provider [choose from the range of: [AMOUNT] to [AMOUNT] per Hour of additional development time].
        2. Conformance with Final Specification Sheet. Where Client's desired post-Final Acceptance modifications are to cause the Web Site to conform to the Final Specification Sheet, Service Provider shall provide up to [choose from the range of: [NUMBER] to [NUMBER] Hours of development time at no additional charge. Additional time shall be paid by Client at the rate of [choose from the range of: [AMOUNT] per Hour for development time].
        3. Deviations from Final Specification Sheet. Where Client's desired post-Final Acceptance modifications are to cause its Web Site to deviate from the Final Specification Sheet ("Improvements"), Service Provider shall be paid by Client at the rate of [choose from the range of: [AMOUNT] to one hundred and [AMOUNT] per Hour for development time. The parties agree that Client is not obligated to engage the services of Service Provider for Improvements and that Service Provider is not obligated to perform work on Improvements.
     4. Service Provider Not Liable for Caching. Client expressly recognises that some ISPs may continue to cache unmodified versions of Client's Web Site after modifications or Improvements are made, and Client expressly agrees to indemnify and hold Service Provider harmless for any damages caused by such caching.
  2. **Copyright and Intellectual Property Ownership**
     1. Service Provider's Retained Rights
        1. Works Created by Service Provider. [ALTERNATIVE 1] The parties expressly recognise that the Web Site is not a "work made for hire", that Service Provider is an independent contractor, and that Service Provider is not an employee, partner, joint author or joint venture of Client. Service Provider shall be deemed the sole author and owner of [PROGRAMMING CODE], HTML Code, graphics and data, and their attendant Intellectual Property Rights that are created or acquired by Service Provider and incorporated into the Web Site, or incorporated into any work embodying or derived from any portion of the Web Site. Client shall be deemed the author or owner of Client's Domain Name, and any graphics or data provided by Client and incorporated into the Web Site, or incorporated into any work embodying or derived from any portion of the Web Site.

[ALTERNATIVE 2] The parties expressly recognise that the Web Site is a "work made for hire", that Service Provider's work on the Web Site has been specially ordered and commissioned by Client as a contribution to a collective work, supplemental work or such other category of work as may be eligible, to the greatest extent available under the [YOUR COUNTRY LAW], for treatment as a "work made for hire".

Client shall be deemed the sole author of the Web Site, its contents and any work embodying or derived from any portion of the Web Site. Client shall also be deemed the owner of the Web Site and its attendant Intellectual Property Rights. To the extent that the Web Site is not properly characterised as a "work made for hire," then Service Provider hereby irrevocably grants, assigns and otherwise transfers exclusively and in perpetuity to Client, its successors and its assigns, all rights of Service Provider in the Web Site whatsoever, now existing or hereafter discovered, in all media and forms of expression.

[ALTERNATIVE 3] Client expressly recognises that it is not the author or owner of any [PROGRAMMING CODE], HTML Code, graphics or data provided to Client by Service Provider, nor their attendant Intellectual Property Rights, where such [PROGRAMMING CODE], HTML Code, graphics or data was created or acquired by Service Provider prior to the date first written above ("Service Provider's Toolset"). The parties expressly recognise that Service Provider's work on the Web Site, except for Service Provider's Toolset, has been specially ordered and commissioned by Client as a contribution to a collective work, supplemental work or such other category of work as may be eligible, to the greatest extent available under the [YOUR COUNTRY LAW], for treatment as a "work made for hire".

Client shall be deemed the sole author of the Web Site, its contents, any work embodying or derived from any portion of the Web Site, and their attendant Intellectual Property Rights, except for Service Provider's Toolset. To the extent that the Web Site is not properly characterised as a "work made for hire," then Service Provider hereby irrevocably grants, assigns and otherwise transfers exclusively and in perpetuity to Client, its successors and its assigns, all rights of Service Provider in the Web Site whatsoever, except for Service Provider's Toolset, now existing or hereafter discovered, in all media and forms of expression. Service Provider also hereby irrevocably grants, assigns and otherwise transfers non-exclusively and in perpetuity to Client, its successors and its assigns, the right to reproduce Service Provider's Toolset, to prepare derivative works therefrom, to publicly perform or to publicly display Service Provider's Toolset.

[ALTERNATIVE 4] The parties expressly recognise that the Web Site is not a "work made for hire", that Service Provider is an independent contractor, and that Service Provider is not an employee, partner, joint author or joint venture of Client. Service Provider shall be deemed the sole author and owner of all [PROGRAMMING CODE], HTML Code, graphics and data, and their attendant Intellectual Property Rights that are incorporated into the Web Site, or incorporated into any work embodying or derived from any portion of the Web Site. Service Provider hereby grants, assigns and otherwise transfer non exclusively and [choose from the following: "in perpetuity" or "for a period of years after Final Acceptance" or "for a total of Hits/Visits/Users/Identified Users" as measured by generally accepted industry standards] to Client, its successors and its assigns, the right to reproduce the Web Site, to prepare derivative works therefrom, to publicly perform or to publicly display the Web Site.

* + - 1. Publicity and Demonstration Rights of Client's Works. If Client retains any rights in the Web Site, Client hereby expressly grants, assigns and otherwise transfers non-exclusively and in perpetuity to Service Provider, its successors and its assigns, the right to publicly perform or to publicly display the Web Site only for the purposes of Service Provider marketing and advertising.
    1. Client's Retained Rights
       1. Works Created by Client. Client shall be deemed the author and owner of Client's Domain Name and its attendant Intellectual Property Rights; Client's uniform resource locator, if any, and its attendant Intellectual Property Rights; and any graphics or data provided by Client that are incorporated into the Web Site or any work embodying or derived from any portion of the Web Site.
       2. Reproduction, Derivation, Performance and Display Rights of Service Provider's Works. Service Provider expressly grants, assigns and otherwise transfers non-exclusively and in perpetuity to Client, its successors and its assigns, the right to reproduce, make derivative works, publicly perform or publicly display the Web Site. Service Provider does not, however, assign to Client the right to sublicense the Web Site, nor any portion thereof.
  1. **No Solicitation of Service Provider's Employees**

Client agrees that it shall not solicit the employment of, nor hire, any of Service Provider's employees during the term of this Agreement, and for a period of [NUMBER] months thereafter.

1. **WEB HOSTING SERVICES**
   1. **Fees and Maximum Data Transmission**

Client shall pay Service Provider a monthly Web Hosting fee that is commensurate with the amount of data transmitted from Client's Web Site onto the Internet:

Monthly Fee Maximum Monthly Data Transmission (Gigabytes)

[AMOUNT] [NUMBER [AMOUNT]

[NUMBER [AMOUNT]

[NUMBER] [AMOUNT]

For each additional gigabyte of monthly transmissions above [NUMBER]

Service Provider reserves the right to change the rates as set forth above upon [NUMBER] days' notice. Client shall pay the appropriate monthly fee - as determined by the above table - in advance, and Client shall be liable to pay the full month's fee, even if service is terminated before the end of the month for any reason. If Client fails to pay all outstanding bills more than [NUMBER] days after the due date, Client is liable for an [AMOUNT] administrative surcharge, and Client may have its account suspended. If payment is returned or rejected, Client's account will be suspended, and the Client agrees to pay an [AMOUNT] charge. Suspension of its account does not relieve Client from its obligation to pay any and all accrued fees, charges and costs due to the Company. Suspended service may be resumed by Service Provider, at Service Provider's sole discretion, after Service Provider has received full payment of all amounts due, along with a reconnect charge of [AMOUNT]. Past due amounts are subject to an interest rate charge of [PERCENTAGE %] percent per month from the date of invoice, or the maximum rate permitted by law. Client agrees to pay all costs of collection, including attorney fees and collection agency fees.

* 1. **Maximum Hard disc Space**

Client shall be allotted a total of [NUMBER] megabytes of storage space on Service Provider's hard drive, which may be used to store Client's Web Pages, ordering information and databases, and user communications. Client shall pay [AMOUNT] to Service Provider per month for each additional increment of [NUMBER] megabytes stored.

* 1. **Domain Name**
     1. Registration. Should Client request the assistance of Service Provider to obtain a Domain Name, Client shall pay [AMOUNT] to Service Provider, and Service Provider shall subsequently perform an availability search for, reserve and register Client's desired Domain Name with [SPECIFY]. Service Provider does not guarantee that Client shall be assigned its desired name, and Service Provider is not responsible for any Domain Name that has been issued to any other entity.
     2. Client's Warranty of Ownership and Non-Infringement. Client expressly confirms and warrants that Client is the owner of, or is duly authorised by the owner to use, any trademark or name requested or allocated as its Domain Name. Client further warrants that neither Client's nor Service Provider's use or registration of Client's Domain Name constitutes an infringement of any other entity's Intellectual Property Rights.
     3. Client Indemnification of Service Provider. Service Provider shall not undertake to resolve any disputes or litigation on Client's behalf involving Domain Name registration, and Client agrees that it shall indemnify, hold Service Provider harmless and defend Service Provider against any disputes involving Domain Name use or registration.
     4. Jurisdictional Disputes. The parties expressly recognise that, where Service Provider is acting solely as Client's Web Host, Service Provider is not engaged in, and is not actively soliciting interstate or international commerce. Where Service Provider is a named party to any type of dispute or litigation involving any acts by Client that affect out-of-state persons or entities, Client agrees that it shall indemnify, hold Service Provider harmless, defend Service Provider and challenge the jurisdiction of out-of-state authorities over Service Provider.
  2. **Hit Statistics**
     1. Monthly Reports. Service Provider shall issue a monthly report to Client indicating the total number of hits to the Client's Web Site according to the following format: hits on all Web Pages; visits to Client's primary Web Page; users of each Web Page, provided that Client's Web Site is coded to record user addresses; and identified users of Client's Web Site, provided that Client's Web Site is coded to receive and record manual or Cookie data from users.
     2. Server Logs. Client shall also have the right to review the raw data contained in Service Provider's server logs for any immediately preceding [NUMBER] month period, provided that Client pays Service Provider [choose from the range of: [AMOUNT] to [AMOUNT] per Hour for Service Provider's time required to provide such information to Client.
     3. No Liability for Cached Hits. Client expressly recognises that the actual number of hits to Client's Web Site is lower than the numbers reported by Service Provider, due to caching of Client's Web Site on the Internet. As such, Client hereby indemnifies and holds Service Provider harmless for any damages caused by such caching.
  3. **No Sub-Web Pages**

Client expressly agrees that it shall not permit any person or entity, which is not affiliated with the Client to maintain any Web Page within the Client's Web Site.

* 1. **CSP's Duties**
     1. Web Site Storage and Internet Link. Service Provider shall store Client's Web Site on Service Provider's Internet server. The parties expressly recognise that Internet servers and links are susceptible to crashes and down time. Service Provider warrants that it shall maintain a consistent link with the Internet, but Service Provider cannot and does not warrant that it shall maintain a continuous and uninterrupted link.
     2. Bandwidth. Service Provider agrees that it shall maintain a dedicated [choose from: [SPECIFY] or [SPECIFY]] connection to the Internet; however, Service Provider does not warrant any response rate or download time.
     3. Modems. Service Provider warrants that it shall maintain a user-to-modem ratio of no more than [choose from the range of: [SPECIFY] to [SPECIFY]], and that each modem shall operate at a maximum speed of no less than [choose from the range of: [NUMBER] to [NUMBER]] kilobytes *per se*cond.
     4. Processor Capacity. Service Provider agrees that its servers shall, on the average, operate at less than [PERCENTAGE %] percent processor capacity between [HOUR] a.m. and [HOUR] p.m. [SPECIFY TIME ZONE] every day.
     5. Backup. In case of server crashes, power outages, maintenance, service or improvement, Service Provider shall host one mirrored image of Client's Web Site on a backup Service Provider server, supplied with a backup power supply.
     6. Maintenance. Service Provider may, at its own discretion, temporarily suspend all service for the purpose of repair, maintenance or improvement of any of Service Provider's systems. However, Service Provider shall provide prior notice where it is reasonably practicable under the circumstances, and Service Provider shall restore service as soon as is reasonably practicable. Client shall not be entitled to any setoff, discount, refund or other credit, in case of any service outage which is beyond Service Provider's control or which is reasonable in duration.
     7. Security. The parties expressly recognise that it is impossible to maintain flawless security, but Service Provider shall take reasonable steps to prevent security breaches in Service Provider's server interaction with Client and security breaches in Service Provider's server interaction with resources or users outside of any firewall that may be built into Service Provider's server. However, Client is solely responsible for preventing password protected pages within its Web Site from being automatically indexed and linked to search engine Robots or Spiders. The client is solely responsible for any damage caused by such unauthorised access, and Client indemnifies and holds Service Provider harmless for any compromise of Client's security.
     8. Privacy. Message and data encryption are enabled on Service Provider's server. However Client is solely responsible for encoding its Web Site to conform to generally accepted encryption standards, and Client indemnifies and holds Service Provider harmless for any compromise of Client's encryption method.
  2. **Caching Permitted by Service Provider**

Client expressly grants to Service Provider a licence to cache the entirety of Client's Web Site in RAM, Client expressly agrees that such caching is also deemed "fair use" under the [COUNTRY] Copyright Act, and Client expressly agrees that such caching is not an infringement of any of Client's Intellectual Property Rights.

* 1. **Export Control**

Client agrees that its Web Site shall comply with all export, re-export or import laws and regulations of any jurisdiction from which Client's Web Site is transmitted or accessed. Client agrees that it shall obtain written authority from all appropriate governmental bodies if Client intends at any time to re-export any items originating from that jurisdiction to any prescribed destination. Client shall indemnify Service Provider, hold Service Provider harmless and provide a defence to Service Provider for any such compromise of Client's security.

1. **ORDER AND PAYMENT INFORMATION FORWARDING**
   1. **Order Collection and Storage**

Client confirms that its Web Site contains an order entry form, a true and correct copy of which is attached hereto as Attachment [SPECIFY]. Orders shall be collected in accordance with the rules embodied by Client's order entry form, [PROGRAMMING CODE], HTML Code or other code. The sequence of fields within each record shall follow the sequence of fields in Client's order entry form, stored as ASCII text, and delimited by a comma character (",") character. Orders shall be stored on a daily basis in a database that shall be identified by the relevant date. Client's databases shall be kept for [NUMBER] month by Service Provider, and Client is solely responsible for long-term storage of its own databases.

* 1. **Order Retrieval and Transmission**

Client's daily order database shall be stored on a remote server which is inaccessible by Internet users, and which is accessible only by local dial-up using the following password: Client is solely responsible for the security and proper use of the password, and must take all necessary steps to ensure that the password is kept confidential, secure, used properly and not disclosed to unauthorised people. Client shall immediately notify Service Provider if there is any reason to believe that the password has become known to someone not authorised to use it. The client may at any time retrieve its order databases; however, at [HOUR] [SPECIFY TIME ZONE], Service Provider shall, on a daily basis, electronically transmit copies of Client's daily order database to Client's shipping and accounts receivable departments.

* 1. **Client Shall Process Orders and Payments**

Client shall be solely responsible for shipping user orders and collecting user payments.

* 1. **Royalty**

Client agrees that it shall pay to Service Provider, on a monthly basis, a royalty of [choose from the range of: [PERCENTAGE %] percent (%) to [PERCENTAGE %] percent (%) of Client's monthly gross sales of all goods sold or services contracted by Client through Service Provider's Internet facilities. Gross sales shall be calculated by tallying Client's daily order databases and shall not be reduced by any debts which are uncollected or uncollectable by Client. Client hereby expressly grants Service Provider the right to inspect Client's daily order databases, and to perform an accounting of Client's records upon [choose from the range of: [NUMBER] to [NUMBER] days' written notice. Client shall, in good faith, assist and cooperate with Service Provider to perform such an accounting.

* 1. **Client Warranties and Indemnification**

Client confirms and warrants that Client is the sole provider of Client's goods or services, that Service Provider is merely Client's Internet communication medium, and that Service Provider is not Client's selling agent, distributor, marketer or another affiliate. Client confirms and warrants that Client shall not offer or sell any goods or services that are illegal in light of the purchaser's age, jurisdiction or other circumstance, that infringe any rights of others, or that are defective. Client hereby indemnifies Service Provider, holds it harmless, and agrees to defend Service Provider against any liability, which may arise from Client's provision of any goods or services through Service Provider's Internet facilities.

1. **INTERNET SERVICE PROVIDER AGREEMENT**
   1. **Internet Account and Access**

Service Provider shall provide to Client a user name, e-mail address and link through Service Provider's dial-up Internet server. Client shall be permitted unlimited Internet usage, and shall be limited to [choose from the range of: [NUMBER] to [NUMBER] megabytes of hard disc space for email storage on Service Provider's server. Service Provider shall also provide to Client the following unique password: Client is solely responsible for the security and proper use of the password and must take all necessary steps to ensure that the password is kept confidential, secure, used properly and not disclosed to unauthorised people. Client shall immediately notify Service Provider if there is any reason to believe that the password has become known to someone not authorised to use it.

* 1. **Fees**

Client shall pay to Service Provider [AMOUNT] per month in advance for Client's Internet account and access. Service Provider reserves the right to change the monthly rate upon [NUMBER] days' notice. Client shall be liable to pay the full month's fee, even if service is terminated before the end of the month for any reason. If Client fails to pay all outstanding bills more than [NUMBER] days after the due date, Client is liable for an [AMOUNT] administrative surcharge, and Client may have its account suspended. If payment is returned or rejected, Client's account will be suspended, and the Client agrees to pay an [AMOUNT] charge. Suspension of its account does not relieve Client from its obligation to pay any and all accrued fees, charges and costs due to the Company. Suspended service may be resumed by Service Provider, at Service Provider's sole discretion, after Service Provider has received full payment of all amounts due, along with a reconnect charge of [AMOUNT]. Past due amounts are subject to an interest rate charge of [PERCENTAGE %] percent per month from the date of invoice, or the maximum rate permitted by [YOUR COUNTRY LAW]. Client agrees to pay all costs of collection, including attorney fees and collection agency fees.

* 1. **Client Agrees to Abide by Service Provider Operating Policies**

Client agrees that it shall abide by Service Provider operating policies, which may be amended from time to time at Service Provider's sole discretion, and Client agrees to indemnify, hold harmless and provide a defence for Service Provider against any claims arising from Client's failure to follow these guidelines:

* + 1. Client agrees not to post or transmit any message anonymously or under a false name.
    2. Client agrees not to post or transmit any message which is libelous, defamatory or which discloses private or personal matters concerning any person.
    3. Client agrees not to post or transmit any message, data, image or program, which is illegal, indecent, obscene or pornographic.
    4. Client agrees not to post or transmit any message, data, image or programme that would violate the Intellectual Property Rights of others.
    5. Client agrees not to interfere with the use of the Internet by any other Service Provider Clients or other users.
    6. Client agrees not to post or transmit any file which contains viruses, worms, "Trojan horses" or any other destructive features, regardless whether damage is intended or unintended by Client.
    7. Client agrees not to post or transmit any message which is harmful, threatening, abusive or hateful.
    8. Client agrees that its use of Service Provider's Internet access services is for education or amusement purposes only and that Client shall not use this service for commercial purposes. Client agrees not to post or transmit any advertising, promotional materials or any other solicitation for goods or services, except in those areas of the Internet that are designated for such purposes, such as marketplace bulletin boards or classified advertisement sections of Web Sites.
    9. Client agrees not to post or list articles, which are off-topic, according to the description of the newsgroup.
    10. Client agrees not to list or send unsolicited mass e-mailings to more than [NUMBER] e-mail users if such unsolicited e-mailings provoke complaints from the recipients.
    11. Client agrees that it shall be solely responsible for providing its own connection to Service Provider via a telecommunications service and that it shall be solely responsible for providing a suitable computer, modem and other hardware or communications equipment necessary to access Service Provider. The client also agrees that, if it accesses Service Provider through a LAN or WAN, it shall be solely responsible for providing, maintaining and supporting a network and IP router that interface satisfactorily with Service Provider.
    12. Client agrees that its account shall be used solely by Client. Regardless whether Client has actual control over the acts of third parties, Client agrees that it has the last clear chance to avoid usage by third parties, and Client indemnifies and holds Service Provider harmless for their Usage.
  1. **Service Provider's Monitoring and Termination Rights**

The parties expressly recognise that Service Provider cannot and does not screen content provided by any Internet users of the Service, however, the parties agree that Service Provider has the right, but not the obligation, to remove from its server or block access over the Internet to any communications and materials that Service Provider believes, in its sole discretion, violate any of the policies enunciated in Paragraph 5.3, above, or any [YOUR COUNTRY LAW] of any jurisdiction served by Service Provider. The parties also agree that Service Provider may, in its sole discretion, terminate Client's account for any violation of the policies enunciated in Paragraph 5.3, above.

* 1. **Service Provider's Duties**
     1. Internet Link. Service Provider warrants that it shall maintain a consistent link with the Internet, but Service Provider cannot and does not warrant that it shall maintain a continuous and uninterrupted link.
     2. Bandwidth. Service Provider agrees that it shall maintain a dedicated [Choose from: [SPECIFY] or [SPECIFY]] connection to the Internet.
     3. Modems. Service Provider warrants that it shall maintain at least [choose from the range of: [NUMBER] to [NUMBER] modems, each of which shall operate at maximum speeds of no less than [choose from the range of: [NUMBER] to [NUMBER]] kilobytes *per se*cond.
     4. Processor Capacity. Service Provider agrees that its servers shall, on the average, operate at less than [PERCENTAGE %] percent processor capacity between the [HOUR] a.m. and [HOUR] p.m. [SPECIFY TIME ZONE] every day.
     5. Backup. In the case of server crashes, power outages, maintenance, service or improvement, Service Provider shall host one additional Service Provider server, supplied with a backup power supply.
     6. Maintenance. Service Provider may, at its own discretion, temporarily suspend all service for the purpose of repair, maintenance or improvement of any of Service Provider's systems. However, Service Provider shall provide prior notice where it is reasonably practicable under the circumstances, and Service Provider shall restore service as soon as is reasonably practicable. Client shall not be entitled to any setoff, discount, refund or other credit, in case of any service outage which is beyond Service Provider's control or which is reasonable in duration.

1. **WARRANTIES. SERVICE PROVIDER CONFIRMS AND WAW RANTS THAT:**
   1. **Service Provider's Power to Enter Agreement**

Service Provider has the right to enter into this Agreement and to grant the rights granted in it.

* 1. **Service Provider's Good Faith Performance**

Service Provider shall, in good faith, comply with the terms of this Agreement.

* 1. **Web Site Design**
     1. Service Provider is the Sole Creator. Service Provider is the sole creator of any Web Sites designed by Service Provider, except for those graphics and data supplied by Client, and that neither Service Provider's work nor entering into this agreement will impair or violate anyone else's Intellectual Property Rights.
     2. Web Site Shall Function with Many Browsers. The Web Site shall be prepared in a workmanlike manner, and the Web Site will function in conjunction with properly configured web browsers including, but not limited to, Netscape, Mosaic, AOL Browser and Internet Explorer.

1. **DISCAIMERS**
   1. **Liability Limitations**

The goods and services provided by Service Provider are provided AS IS, WITHOUT WARRANTY OF ANY KIND TO CLIENT OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; AND 7) TITLE. CLIENT AGREES THAT ANY EFFORTS BY SERVICE PROVIDER TO MODIFY ITS GOODS OR SERVICES SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS, AND THAT ANY Service Provider WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. CLIENT FURTHER AGREES THAT SERVICE PROVIDER SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF SERVICE PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WAS GROSSLY NEGLIGENT. MODIFICATIONS MADE TO CLIENT'S WEB SITE BY CLIENT OR ANY THIRD PARTY VOIDS ANY REMAINING EXPRESS OR IMPLIED WARRANTIES. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages, and, as such, some portion of the above limitation may not apply to Client. In such jurisdictions, Service Provider's liability is limited to the greatest extent permitted by law.

* 1. **Service Provider Not Liable for Delays or Defaults**

Service Provider shall not be liable for delays or defaults in furnishing goods or services hereunder if such delays or defaults on the part of Service Provider are due to:

* + 1. Acts of God or of a public enemy;
    2. Acts of the [COUNTRY] or any state or political subdivision thereof;
    3. Fires, severe weather, floods, earthquakes, natural disasters, explosions or other catastrophes;
    4. Embargoes, epidemics or quarantine restrictions;
    5. Shortage of goods, labour strikes, slowdowns, differences with workmen or labour stoppages of any kind;
    6. Delays of supplier or delay of transportation for any reason;
    7. Causes beyond the control of Service Provider in furnishing items or services including, but not limited to, breakdown or failure of machinery or equipment, or delay in Client reporting problems or furnishing information or materials.

Acceptance of delivery of goods or services shall constitute a waiver and release of Service Provider by Client for any claim for damages, setoff, discount or other liability on account of delay.

* 1. **Third Party Transactions at Client's Peril**

The parties expressly recognise that Service Provider does not operate, control or endorse any information, products or services on the Internet and that any entities that do offer such information, products or services are not affiliated with Service Provider. Service Provider does not make any express or implied warranties, representations or endorsements TO CLIENT OR ANY THIRD PARTY whatsoever with regard to any information, products or services provided through Service Provider AND OBTAINED OR CONTRACTED OVER the Internet, including, without limitation, warranties of 1) MERCHANTABWITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT AND 7) title. Service Provider shall not be liable TO CLIENT OR ANY THIRD PARTY for any cost or damage arising either directly or indirectly from any transaction involving third parties' information, products or services. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages, and, as such, some portion of the above limitation may not apply to Client. In such jurisdictions, Service Provider's liability is limited to the greatest extent permitted by law.

* 1. **Downloading of Data or Files at Client's Peril**

The parties expressly recognise that Service Provider cannot and does not guarantee or warrant that files available for downloading through Service Provider will be free of infection, viruses, worms, Trojan horses or other code that manifests contaminating or destructive properties. Client agrees that it shall be solely responsible for implementing sufficient procedures to satisfy Client's particular requirements for accuracy of data input and output, and for maintaining a means external to Service Provider for the reconstruction of any lost data. The parties also expressly recognise that the Internet contains unedited materials, some of which are unlawful, indecent, or offensive to Client, and access to such materials by Client is done at Client's sole risk.

1. **TERMINATION**
   1. **Termination by Service Provider** 
      1. No Cause. Service Provider reserves the right to, and Client agrees that Service Provider may, terminate any and all services to Client for no cause and without any reason upon [choose from the range of: [NUMBER] to [NUMBER] days' notice.
      2. Cause. Service Provider reserves the right to, and Client agrees that Service Provider may, cancel this Agreement and terminate any and all services to Client immediately, and without prior notice, in the event that Client fails to fulfil any material obligation contained in this Agreement. SERVICE PROVIDER RESERVES THE RIGHT TO USE SELF-HELP TO THE GREATEST EXTENT PERMIT'TED UNDER THE LAW, INCLUDING, BUT NOT LIMITED TO, AND ELECTRONIC REMEDIES.
   2. **Termination by Client**

The client may terminate its Web Hosting or ISP agreement for any reason upon [choose from the range of: [NUMBER] to [NUMBER] days’ notice. The client may not terminate any Web Site Development agreement without Service Provider's written consent].

* 1. **Post-Termination Rights**
     1. Fees Owed to Service Provider. After termination by any party for any reason, Service Provider shall retain the right to recover all accrued charges due and owing by Client to Service Provider, and Client agrees that it waives any right it may have against Service Provider to offset fees payable by Client to Service Provider.
     2. Client's Continued Indemnification. Client's indemnification of Service Provider under Paragraphs [SPECIFY] above, shall survive any termination of this Agreement.
     3. Web Site Code. Service Provider shall deliver to Client [NUMBER] copy of Client's Web Site [PROGRAMMING CODE] and HTML Code, and Client shall abide by the terms of Paragraph [SPECIFY], above.
     4. Forwarding Notice and Hyperlink. Immediately upon termination Client shall notify Service Provider of its new Web Site address, if any, and Service Provider shall maintain a forwarding notice and hyperlink to Client's new Web Host for a period of [choose from the range of: [NUMBER] to [NUMBER] months after the effective date of termination].

1. **DELEGATION OF DUTIES**

The parties recognise that Client has retained Service Provider's services for Service Provider's unique development capabilities. As such, Service Provider shall not delegate any of its duties under this Agreement to any other person, entity or subcontractor.

1. **CONFIDENTIAL INFORMATION**
   1. **Confidentiality**

The parties recognise that each shall come into possession of information that comprises valuable trade secrets and other confidential information ("Confidential Information") which is exclusively owned by the conveying party. Both parties expressly recognise that Confidential Information is being conveyed to them under conditions of confidentiality, and agree that they shall not disclose Confidential Information to any third party during the term of this Agreement, and for a period of [choose from the range of: [NUMBER] to [NUMBER] years following the termination or expiration of this Agreement. The parties may, however, disclose Confidential Information only to their employees who need to know Confidential Information in order to assure the parties' compliance with the other terms and conditions of this Agreement.

* 1. **Non-Competition**

The parties recognise that each party's Confidential Information may provide specific information relating to their respective industries and that Confidential Information would unfairly benefit the other party if they were to engage in that business. Service Provider agrees that, during the term of this Agreement and for a period of (choose from the range of: [NUMBER] to [NUMBER] years following the termination or expiration of this Agreement, Service Provider shall not engage in any business which is closely related to Client's business, and Service Provider shall not design any Web Sites for any third parties which are engaged in any business which is closely related to Client's business. Client agrees that, during the term of this Agreement and for a period of [NUMBER] years following the termination or expiration of this Agreement, Client shall not undertake to design any Web Sites for any third party.

* 1. **Employees**

The parties recognise that the other's employees are uniquely qualified for their jobs and that the identity of both parties' employees is Confidential Information. Therefore, the parties agree that, during the term of this Agreement and for a period of [choose from the range of: [NUMBER] to [NUMBER] years following the termination or expiration of this Agreement, neither party shall solicit the employment of, nor employ, any of the other party's employees.

1. **REMEDIES**

The failure of either party to seek relief for the other party's breach of any duty under this Agreement, shall not waive any right of the non-breaching party's to seek relief for any subsequent breach.

1. **ARBITRATION**

Any dispute concerning the parties' duties under this Agreement which the [COMPANY NAME] cannot resolve within [choose from the range of: [NUMBER] to [NUMBER] days shall be directed to binding arbitration administered by, and pursuant to the rules of, [YOUR COUTNRY ACT/LAW/RULE] in the County of, in the State of with all expenses being shared equally by the [COMPANY NAME]. judgement  upon any [YOUR COUNTRY ACT/LAW/RULE] award may be entered in any court having jurisdiction. Any costs incurred in the enforcement of the arbitration award shall be paid by the party against whom enforcement is sought.

1. **GOVERNING LAW AND JURISDICTION**

The construction, validity and performance of this Agreement shall be governed by, and construed in accordance with, the [YOUR COUNTRY LAW] of the State of [SPECIFY] and the parties expressly waive its choice of [YOUR COUNTRY LAW] rules. The parties agree that venue and jurisdiction for any litigation arising out of, related to, or regarding the validity of, this Agreement shall lie in the Region of [COUNTRY].

1. **NOTICE**

All notices must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested. All Notices to Service Provider shall be addressed and delivered to:

All Notices to Client shall be addressed and delivered to [SPECIFY] Notices transmitted orally or by electronic means shall be deemed insufficient notice.

1. **ENTIRE AGREEMENT**

This Agreement and Attachments [SPECIFY] supersede any and all other agreements, either oral or in writing, between the parties with respect to the matters stated herein, and this Agreement contains all of the covenants and agreements between the parties with respect thereto. This Agreement may be amended or modified only in writing and shall be effective only after affixation of both parties' signatures.

1. **SEVERABILITY**

If any provision of this Agreement is held to be invalid or unenforceable for any reason whatsoever, the remaining provisions shall remain valid and unimpaired and shall continue in full force and effect.

1. **INSURANCE**

Client agrees to obtain and maintain during the term of this Agreement all insurance coverage necessary to guard again all risks of loss that may arise out of, or relating to, this Agreement, including business interruption insurance.

1. **CAPTIONS**

Captions contained in this Agreement are for reference purposes only and are not intended by either party to describe, interpret, define, broaden or limit the scope, extent or intent of the Agreement or any of its provisions.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

COMPANY SERVICE PROVIDER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**SAMPLE SPECIFICATION SHEET**

1. Web Site Root Structure

2. Web Site Functionality

2.1. For ease of jumping from one branch to another, each Web Page shall contain a reference "image map" for each of the following major Web Pages: Client Web Site (home page), Products, Order Form, About Us and Frequently Asked Questions.

2.2. For speed in downloading, each Web Page including text, graphics and image maps - shall contain no more than [NUMBER] kilobytes of data, and each graphics image shall be stored in JPEG, interlaced mode.

2.3. Each Web Page shall display a consistent appearance, including common font sizes, colours, and graphics dimensions.

3. Coding

3.1. CSP shall code Client's Web Site in order to accurately and quickly calculate all automatic calculations contained in Client's Order Form (see Attachment [SPECIFY], below).

3.2. CSP shall code Client's Web Site to enable Client to change advertising balloons remotely from Client's facilities.

Each record within Client's databases shall be stored as ASCII text, and delimited by a hard return. Data within each field (indicated by an underline) within each record shall be delimited by a " " character.

Login

E-mail address:

First-time customer or repeat customer (FIR):

(If "R", then Shipping Address, below, is automatically duplicated from the database; if "F,', then "Re-enter password" window, below, pops up)

Password:

[Re-enter password if first-time customer:]

(If repeat customer, then data from "Password" field invisibly duplicated; If the first-time customer, then blank for repeat entry)

Select purchase items Item "X" Quantity:

(Default "0")

Item "Y" Quantity:

(Default "0")

Item "Z" Quantity:

(Default “0")

Select a payment method

(Pull-down menu)

Visa (yields a "1" result)

MasterCard (yields a "2" result)

Discover (yields a "3" result)

American Express (yields a "4" result)

Credit card number:

Expiration date:

Cardholder's exact name:

Shipping Address

Name:

(Duplicate of cardholder name appears, but changes enabled)

Address Line 1:

Address Line 2:

City:

Country:

Postal Code:

Contact Number:

Shipping Method

(Pull-down menu)

Standard Shipping (yields a "1" result)

Second Day Air (yields a "2" result)

Next Day Air (yields a "3" result) Final Tabulation

Sub-total of items purchased:

(Automatically calculated)

Tax:

(Automatically calculated)

Shipping:

(Automatically calculated)

Total:

(Automatically calculated)

Final authorisation for purchase: BUTTON

(Button "push" yields "1" result; default = "0")