

INTERNET ADVERTISING AGREEMENT

This Internet Advertising Agreement ("Agreement") is made and entered into as of the ____ day of _____, 200__ ("Effective Date"), by and between: (a) _____, a _____ corporation, with offices at _____ ("Company"); and (b) _____, a _____ corporation, with offices at _____ ("Customer"). Company and Customer are collectively referred to as the "parties."

WHEREAS, Company operates a web site on the Internet on and through which Company desires to provide to Customer the service of advertising Customer's goods and services; and

WHEREAS, Customer desires to accept from Company the service of advertising Customer's goods and services on and through Company's web site.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be legally bound, agree as follows:

1. Advertising Services

a. *Services.* Subject to the terms and conditions of this Agreement, Company agrees to perform and provide to Customer, the services as set forth at Exhibit A ("Services") of non-exclusive, worldwide storage, presentation, copying, transmission, performance and display of the graphical image files, text, animation, software, links, product or service names, and trade or service marks or names provided by Customer as identified at Exhibit B ("Banner") on and via Company's Internet web site as described at Exhibit C ("Site") and available to persons accessing the Site by means of web browser software ("Users").

b. *Delivery and Performance.* Within thirty (30) days of the Effective Date, Customer shall deliver the Banner to Company in such file formats and on such media as specified at Exhibit B. Customer shall be solely responsible for providing the Banner in the format required for display on and via the Site. Within fourteen (14) days of Customer's delivery of the Banner to Company, Company shall commence performance of the Services. Customer acknowledges that Company shall not be responsible for any delays in Company's performance of the Services in the event Customer fails to deliver the Banner in substantial conformance with Exhibit B and this Section 1(c).

2. License

In consideration of Company's performance of the obligations of this Agreement and solely in connection with Company's performance of this Agreement, Customer grants to Company a limited, non-transferable, non-exclusive, worldwide license, for the term of this Agreement and only on and via the Site and in connection with computer hardware and software used to maintain, backup and mirror the Site, to: (a) copy, use, store, publicly display, publicly perform and transmit the Banner; (b) incorporate the hypertext reference links of the Banner; and (c) display Customer's trade names, trademarks or service marks in or of the Banner.

3. Proprietary Rights

a. *Customer Ownership.* Customer shall retain all right, title and interest (including copyright and other proprietary or intellectual property rights) in the Banner, Customer's trade names, trademarks and service marks therein and all legally protectable elements, derivative works, modifications and enhancements thereto, whether or not developed by Customer or any contractor, subcontractor or agent for Customer.

b. *Company Ownership.* Except as provided at Section 3(a), Customer acknowledges that the Site, including, without limitation, all trade names, trademarks, service marks, content, text, images, software, media and other materials therein, is a work or collective work, proprietary to or licensed by Company, protected under copyright, trademark and other intellectual property laws, whether or not developed by Company or any other person. To the extent that ownership of any element of the Site does not automatically vest in Company by virtue of this Agreement or otherwise, Customer hereby transfers and assigns to Company all of Customer's right, title and interest in elements of the Site and protectable elements or derivative works thereof.

4. Services Terms and Obligations

a. *Availability of Services.* Subject to the terms and conditions of this Agreement, Company shall use commercially reasonable efforts to provide the Services twenty-four (24) hours a day, seven (7) days a week, throughout the term of this Agreement. Customer agrees that from time to time the Services may not display the Banner as scheduled or may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Company may undertake from time to time; or (iii) causes beyond the control of Company and which are not reasonably foreseeable by Company, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks and network congestion or other failures.

b. *Security Measures.* Company shall undertake commercially reasonable security measures to prevent unauthorized use and ensure the security, confidentiality and integrity of the Banner, including, without limitation: (i) firewall protection; (ii) maintenance of independent archival and backup copies of the Site and the Banner; and (iii) protection from any network attack and other malicious, harmful or disabling data, work, code or program.

5. Unacceptable Content

Company reserves the right, at any time and in Company's sole discretion, to refuse to perform the Services with respect to the Banner or any portion thereof that: (a) fails to conform to the format and technical specifications set forth at Exhibit B; (b) may constitute or is the subject of a notice or claim of any Lanham Act violation, false designation of origin, false advertising or unfair competition under the law of any jurisdiction; (c) contains or is alleged to contain any content, work, name, mark, designation, materials or link that actually or potentially violates any applicable law or regulation or infringes any proprietary, intellectual property, contract or tort right of any person; or (d) contains any content, work, name, mark, designation, materials or link that, to a reasonable person, may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious.

6. Fees and Payment

a. *Fees.* Customer shall pay Company advertising fees and commissions in the amounts set forth at Exhibit D ("Fees"), due and payable at the times and in the amounts stated at Exhibit D.

b. *Taxes.* Customer shall be solely responsible for and shall pay all sales, use, service or other taxes, duties or levies of any governmental entity (exclusive of taxes on Company's net income), including interest and penalties thereon, if any, relating to the Services, whether or not stated in any invoice to Customer. Exclusive of the Services, each party shall be responsible for and pay all sales, use, service, income or other taxes of any governmental authority, howsoever levied, based on or related to such party's sales or licenses of goods and/or services to or from any third person.

c. *Interest and Collection.* Customer agrees that thirty (30) days after the end of each calendar quarter, any unpaid Fees shall accrue interest at one and one half percent (1.5%) per month and Customer shall thereafter pay all such interest in addition to any Fees due. Customer shall pay all costs of collection, including reasonable attorney's fees and costs in the event any collection effort or action is required to collect the Fees.

7. Reports

Company agrees to provide to Customer a written advertising reports no later than thirty (30) days after the end of each calendar quarter, setting forth relevant data regarding the display of and access to the Banner, including the total number of impressions, pages or instances in which the Banner is accessed by and displayed to Users via the Site for such preceding calendar quarter.

8. Warranties and Disclaimer

a. *Customer Warranty.* Customer warrants to Company that: (i) Customer has the right and authority to enter into and perform its obligations under this Agreement; (ii) the Banner shall conform substantially to the description and specifications set forth at Exhibit B; (iii) the Banner shall not constitute or be the subject of a notice or claim of any Lanham Act violation, false designation of origin, false advertising or unfair competition under the law of any jurisdiction; (iv) the Banner does not and shall not contain or be alleged to contain any content, work, name, mark, designation, materials or link that actually or potentially violates any applicable law or regulation or infringes any proprietary, intellectual property, contract or tort right of any person; (v) the Banner does not and shall not contain or be alleged to contain any content, work, name, mark, designation, materials or link that, to a reasonable person, may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; and (vi) Customer owns the Banner and all intellectual property rights therein, or has the right to grant the license to Company herein and authorize the worldwide copying, display and transmission of the Site.

b. *Company Warranty.* Company represents and warrants to Customer that: (i) Company has the power and authority to enter into and perform its obligations under this Agreement; and (ii) Company shall perform its obligations under this Agreement in a commercially reasonable manner.

c. *Disclaimer.* THE SERVICES AND SITE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. PROVISION AND/OR USE OF THE SERVICES OR SITE ARE AT CUSTOMER'S SOLE RISK. COMPANY DOES NOT WARRANT THAT THE SERVICES OR SITE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES COMPANY MAKE ANY WARRANTY AS TO THE PERFORMANCE OR ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICES OR SITE. EXCEPT AS EXPRESSLY STATED AT SECTION 8(b), COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT.

9. Limitation of Liability

EXCLUSIVE OF LIABILITY UNDER SECTION 10 (INDEMNIFICATION), IN NO EVENT SHALL COMPANY BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY FOR DIRECT DAMAGES EXCEED THE TOTAL FEES PAID BY COMPANY TO CUSTOMER HEREUNDER.

10. Indemnification

a. *By Customer.* Customer agrees to indemnify, hold harmless and defend Company and its directors, officers, employees and agents from and against any action, claim, demand, dispute, or liability, including reasonable attorney's fees, arising from or relating to: (i) any allegation that the Banner infringes a third person's copyright, trademark or service mark, name, trade name, or misappropriates a third person's trade secret, name, likeness or identity; (ii) any negligence or willful misconduct of Customer; (iii) any allegation that the Banner is or causes any Lanham Act violation, false designation of origin, or constitutes false advertising or unfair competition under the law of any jurisdiction; and (iv) any sale or license of Customer's goods or services to a third person from or relating to the Site or Banner. Customer agrees that Company shall have the right to participate in the defense of any such claim through counsel of its own choosing.

b. *By Company.* Company agrees to indemnify, hold harmless and defend Customer and its directors, officers, employees and agents from and against any action, claim, demand, dispute, or liability, including reasonable attorney's fees, arising from or relating to: (i) any gross negligence or willful misconduct of Company; and (ii) any sale or license of Company's goods or services to a third person from or relating to the Site.

11. Term and Termination

a. *Term.* The term of this Agreement shall commence on the Effective Date and shall continue for one (1) year, unless sooner terminated. The term of this Agreement shall automatically renew thereafter for successive and consecutive six (6) month terms unless either party provides written notice of termination to the other party at least ninety (90) days prior to the expiration of such term of its desire not to renew.

b. *Termination.* This Agreement may be terminated: (i) by either party upon thirty (30) days written notice to the other party in the event of a material breach of this Agreement by the other party that remains uncured; (ii) by either party in the event a party makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or for reorganization or arrangement under the bankruptcy laws, if a petition in bankruptcy is filed against such party, or if a receiver or trustee is appointed for all or any part of the property or assets of such party; (iii) by Company, immediately upon notice to Customer; or (iv) by a written agreement executed by the parties.

c. *Return and Destruction.* Upon any termination or expiration of this Agreement, Company shall deliver to Customer all copies of the Banner and portions thereof in Company's possession, custody or control and erase and remove all copies of the Banner and portions thereof from any computer equipment and media in Company's possession, custody or control; provided, however, that Company may retain the original or copies of the Banner for dispute resolution purposes or in the event of any claim or dispute concerning the Banner or Site.

d. *Payment Upon Termination.* In the event this Agreement is terminated, Client shall pay Company for all Services undertaken in performance of its obligations hereunder up to the date of termination. Such payment is due and payable within thirty (30) days following such termination.

12. General

a. *Independent Contractors.* The parties and their respective personnel, are and shall be independent contractors and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

b. *Assignment.* Neither party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part without the prior written consent of the other party, such