



## Website & Hosting Agreement

This AGREEMENT is dated and in effect as of \_\_\_\_\_, hereafter referred to as the “Contract Date” between \_\_\_\_\_ hereafter collectively referred to as “Client” and BESPOKE MEDIA GROUP, hereafter referred to as “Developer”.

WHEREAS, Client wishes to retain Developer for the creation, design, and/or hosting of a website, hereafter referred to as the “Client’s Website”, as more fully defined in Section I below;

WHEREAS, Developer wishes to create, design, and/or host Client’s Website and agrees to do so under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

Section I. Client’s Website: Developer agrees to create, design, and/or host Client’s Website subject to and in accordance with the following terms:

A. Templates: Client will select one (1) design from a list of templates provided by the Developer to be used as the overall design for Client’s Website.

B. Words of Text: Client will provide Developer with all FINAL text to be used in the Client’s Website. Web pages of more than 1,200 words of text may be subject to additional fees, especially if significant formatting is required.

C. Photos and Graphic Images: Client will provide Developer with all photographic or other graphic images to be used in connection with Client’s Website. It is incumbent upon the Client to verify the allowable use of any photos, graphic or other images including royalties, fees or other compensation or licensing as may be required by the owner of said photos, graphic or other images. Client hereby indemnifies and absolves Developer from any liabilities arising out of Client’s failure to properly license or pay for any photos, graphic or other images provided to Developer for rendering on Client’s site.

D. Final Review: Upon completion of Client’s Website, Developer will present said website to Client for final review and approval. Client shall have five (5) business days to review said website and provide Developer with a list of reasonable revisions, if any. Client shall be provided with no more than three (3) review sessions of reasonable corrections. Revisions requiring greater than three (3) review sessions by the Client will cause a change order to be initiated which details such necessary changes and recalculates the estimate(s) of time and dollars to complete and implement such revisions.

E. Web Hosting: Following Client’s final review and approval of Client’s Website, Developer shall provide the following web hosting services:

1. Domain Name: Client shall provide and pay for domain name for website and is solely responsible for registration and upkeep of domain. Developer will provide name servers to client for proper hosting configuration.

2. Content Control: Developer shall not, without prior consent from Client, supplement, modify or alter any portion of Client’s Website which has been accepted or approved by Client, other than

modifications strictly necessary to the operation and functionality of Client's Website.

F. Maintenance and Updates: Client is allowed up to two (2) sets of changes to Client's Website during the twelve-month duration of the Agreement commencing on the Contract Date, subject to the following limits:

1. Minor Updates: Revisions and modifications include updating links and making minor changes to a sentence, paragraph, or image. It does not include removing nearly all the text and images from a page and replacing it with new text and images nor does it include a change to the layout or template of the webpage.
2. Additional Updates and Changes: Additional updates and/or changes requested by the Client beyond the above limits shall be billed at the hourly rate to be determined by the Developer.
3. Unauthorized Changes: If the Client or any agent other than Developer attempts to update or revise Client's Website, Developer's time to repair said changes will be assessed to the Client at the hourly rate to be determined, and is not included as part of the allotted updates under Section 1, Paragraph E.1 above.

## Section II. Payment and Fees:

A. Monthly Fee: Client agrees to pay Developer a monthly charge of \$29.99, hereinafter referred to as the "Monthly Charge". The Monthly Charge shall be charged as an automatic and reoccurring charge to Client's credit card, debit card, or Paypal account each month. The first Monthly Charge shall be assessed and be due upon on the first of the month following "Contract Date" and will automatically reoccur on the first day of every following month thereafter for the duration of the Agreement.

B. Contract Renewal: This Agreement shall automatically renew for successive twelve (12) month periods for the life of the Agreement until cancelled in writing in accordance with Section III, Paragraph C below. Client expressly agrees to have the Monthly Charge billed to their credit card, debit card, or Paypal account for the life of the Agreement including any automatic renewal periods.

C. Late Fees: Client understands that it will be notified if its credit card, debit card, or Paypal account fails to authorize the Monthly Charge for any reason, and that a \$10 late fee will apply if Client does not provide a valid credit card, debit card, or Paypal account information within ten (10) calendar days from the date Client is notified by Developer of the failed authorization of Client's credit card, debit card, or Paypal account.

## Section III. Term, Default, and Termination:

A. Term: Client agrees to a twelve (12) month contract, beginning upon the Contract Date.

B. Default: Client understands and agrees this Agreement shall be cancelled without further notification and Client's website will be removed from Developer's hosting server if Client's account becomes more than thirty (30) calendar days late. Client agrees that Developer shall own all rights to Client's Website and shall not be held liable for the removal or disconnection of Client's Website.

C. Termination: Either party may terminate this Agreement by giving written notice to the other of such termination at least thirty (30) days in advance of the Agreement's end date (for example: If the Contract Date is from November 15, 2010 to November 15, 2011 and Client wishes to cancel the

Agreement, Client must notify developer by October 15, 2011).

Upon Client's written notice of termination, all remaining Monthly Charges and expenses due under this Agreement, and any applicable late fees, shall immediately become due and payable in full.

Client's failure to provide written notice of termination in accordance with this paragraph may result in the automatic renewal of the Agreement in accordance with Section II, Paragraph B.

#### Section IV. Customer Covenants:

A. Copyrights and Trademarks: The Client represents to Developer and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other art Client's Website furnished to Developer for inclusion in web pages are owned by the Client, or that the Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend Developer and its subcontractors from any claim or suit arising from the use of such elements furnished by the Client.

B. Account Authorization: Client warrants and represents that it is the holder of the credit card, debit card, or Paypal account to which the Monthly Charge shall be made and that Client is authorized to enter into this Agreement to place such automatic charges on said credit card, debit card, or Paypal account.

#### Section V. Disclaimer:

Developer makes no warranties or representations of any kind, whether expressed or implied for the service it is providing to client under this Agreement. Developer also disclaims any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by the Client, including loss of data resulting from delays, non-deliveries or service interruptions by any cause or errors or omissions of the Client. Use of any information obtained by way of Developer is at the Client's own risk, and Developer specifically denies any responsibility for the accuracy or quality of information obtained through its services. Developer specifically denies any responsibilities for any damages arising as a consequence of system unavailability or other down time.

#### Section VI. Indemnity:

Client agrees that it shall defend, indemnify, and hold harmless the Developer, its agents, customers, officers, and employees, from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees associated with the Developer's development of the Client's Website. This includes liabilities asserted against the Developer, its subcontractors, its agents, its clients, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by the Client, its agents, employee or assigns or otherwise distributed over Client's Website. This includes, but is not limited to, infringing on the proprietary rights of a third party, copyright infringement, and delivering any defective product or misinformation that is detrimental to another person, organization, or business.

#### Section VII. General Provisions:

A. Governing Law: This Agreement shall be governed and construed in accordance with the laws of the State of California, United States of America. Any disputes arising from this contract will be litigated or arbitrated in Orange County, California.

B. Confidentiality: Client and Developer may disclose confidential information of one to the other in connection with Client's Website. Such information shall be so identified in writing at the time of its transmittal, and shall be safeguarded and not disclosed to third parties by the receiving party. Confidential information shall not include information that (a) is already known to the party to which it is disclosed (b) is or becomes part of the public domain without breach of this Agreement or (c) is obtained from third parties, which have no obligations to keep confidential to the parties to this Agreement.

C. Assignment of Work: Developer reserves the right to assign other designers or subcontractors to the Client's Website to provide for quality and on-time completion.

D. Publication: The Client may publish or disclose information regarding the Client's Website and shall acknowledge the support of Developer in all such publications. The Client will not use the name of Developer, in any advertising or publicity without the prior written approval from the Developer. The Developer will not use the name of Client, in any advertising or publicity without the prior written approval from the Client.

E. Copyright Notice: Copyright is in Developer's name. Upon completion of Client's Website, the copyright will only be released to the Client upon the Developer's signing of the Release of Copyright along with satisfactory payment of all fees due Developer for the completion and publication of Client's website.

F. Reservation of Rights: All rights not expressly granted hereunder are reserved to Developer, including but not limited to all rights in sketches, comps, or other preliminary materials.

G. Severability: If any provision of this Agreement is held to be invalid or enforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. Client and Developer agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

H. Independent Contractors: The parties to this Agreement are independent contractors and no agency, partnership, joint venture or employee-employer relationship is intended to or created by this Agreement. Neither party to this Agreement has any authority to assume or create any obligation or liability, either express or implied, on behalf of the other.

I. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

J. Entire Agreement: This Agreement sets for the entire understanding and agreement of the undersigned parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. Any changes or modification to this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement as of the Contract Date defined above.

On behalf of the Client: \_\_\_\_\_ Date \_\_\_\_\_

On behalf of Developer: \_\_\_\_\_ Date \_\_\_\_\_