

## WEBSITE DESIGN AGREEMENT

This Website Design Agreement (this "**Agreement**") is made effective as of the "**Effective Date**", by and between the "**Owner**", and Smalladdy (the "**Designer**").

### **PLEASE READ THIS AGREEMENT CAREFULLY, AS IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS AND REMEDIES**

This Professional Web Services Agreement ("Agreement") is entered into by and between Smalladdy.ca, ("Smalladdy") and you, and is made effective as of the date of electronic acceptance. This Agreement sets forth the terms and conditions of your use of Smalladdy's Professional Web Services ("Service(s)"), and represents the entire agreement between you and Smalladdy concerning the subject matter hereof. Your electronic acceptance of this Agreement signifies that you have read, understand, acknowledge and agree to be bound by this Agreement, along with Smalladdy's Universal Terms of Service Agreement and Hosting Agreement, which are incorporated herein by this reference.

The terms "we", "us" or "our" shall refer to Smalladdy. The terms "you" and "your" shall refer to any individual or entity who accepts this Agreement. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits, except where specifically granted herein.

We may, in our sole and absolute discretion, change or modify this Agreement, and any policies or agreements which are incorporated herein, at any time and such changes or modifications shall be effective immediately upon posting to this Site. Your use of this Site or the Services after such changes or modifications shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not continue to use this Site or the Services. We may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your shopper account information current. We assume no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate email address.

**1. Description of the Services.** The Designer will design a website (the "Website") for the Owner by timely providing the design and programming services listed on Schedule A (the "Services") in a professional and timely manner. All programming and documentation shall comply with standards currently employed by the Owner. The parties may at any time modify the scope of the Services by including desired changes in a written "change order" that explains the changes and the adjustment to the payment for the Services that will

result from such changes. Such change order shall become effective when signed and dated by both parties.

**2. Design Team.** The Designer will use only qualified personnel to provide the Services (the "Design Team"). The Designer reserves the right to make changes to the Design Team in its sole discretion and will provide prior written notice of any anticipated change and a reasonable explanation for the change. Orientation of replacement personnel shall be at the Designer's expense.

**3. Term / Scheduling.** The Services will be completed timely in accordance with the schedule set forth on Schedule A. The Designer will begin the Services on the designated date and continue until the satisfactory completion of the Services. The term "satisfactory completion" of the Services means when the software and documentation developed for the Website performs to the specifications set forth on Schedule A.

**4. Payments.** In consideration for the Services, the Owner will pay the Designer in accordance with the payment schedule and terms set forth on Schedule B.

**5. Ownership Rights.** The Owner will own all of its proprietary information as included in the Services, as well as all source code, object code, screens, documentation, digital programming, operating instructions, design concepts, content, graphics, domain names, and characters. All Services provided by the Designer, including systems, computer programs, operating instructions, unique design concepts, other documentation developed for or specifically relating to the Owner' information processing, all of the Owner's source documents, stored data and other information of any kind, and reports and notes prepared by the Designer, will be "works for hire" under applicable United States copyright laws, and therefore the property of the Owner. Such work may not be used by the Designer for any other purpose except for the benefit of the Owner. Any and all such property shall be delivered to the Owner on request by the Owner. Upon request, the Designer shall sign all documents necessary to confirm or perfect the exclusive ownership interests of the Owner.

**6. Designer's Ownership Rights and Grant of License.** Notwithstanding any other provision of this Agreement, the Services will/may include some programming code that the Designer has previously developed for its own use (the "Designer's Prior Code"). The Designer expressly retains full ownership of such code, including all associated rights to use such code. However, the Designer also grants to the Owner and its users a perpetual, nonexclusive license to use the Designer's Prior Code. A copy of a listing of the specific computer files that comprise the Designer's Prior Code will be provided to the Owner upon completion of the Services. Any programming that includes the Designer's Prior Code shall

include such copyright notices regarding the Designer's Prior Code as the Designer may require.

**7. Copyright Notice.** The Designer shall include the following copyright notice (or any other notices requested by the Owner) to be displayed on each page of the Website that can be viewed by a user: "Copyright 2024 Smalladdy.ca; all rights reserved."

**8. Confidentiality.** The Designer will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the Designer, or divulge, disclose, or communicate in any manner any information that is proprietary to the Owner (e.g., trade secrets, know-how and confidential information). The Designer will protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the Designer will return to the Owner all records, notes, documentation and other items that were used, created, or controlled by the Designer during the term of this Agreement. The Owner may seek and obtain injunctive relief against the release or threatened release of such information in addition to any other legal remedies which may be available.

**9. Working Hours, Office Space and Testing Time.** The Designer's employees, when working on the premises of the Owner, shall observe the Owner's working hours, working rules and policies. The Owner shall provide adequate office space and testing time for the Designer.

**10. Independent Contractor.** The Designer is an independent contractor with respect to its relationship to the Owner. Neither the Designer nor the Designer's employees are or shall be deemed for any purpose to be employees of the Owner. The Owner shall not be responsible to the Designer, the Designer's employees, or any governing body for any payroll taxes related to the performance of the Services. Upon request, the Designer will provide evidence of appropriate insurance coverage for workers compensation and general liability insurance.

**11. Promotion.** The Designer will not use the names, trademarks, service marks, symbols or any abbreviations of the Owner, without the prior written consent of the Owner.

**12. Warranty - Designer.** The Designer warrants to the Owner that all software programming, web pages, CD-ROMs, diskettes, and materials delivered to the Owner in connection with the Services are free from defects in materials and faulty workmanship under normal use, and that the Website will operate properly with widely used web browsers. During the Designer's recommended beta testing period and for a 30 day period following completion of beta testing, the Designer will correct any software anomalies ("bugs") that occur because of defects in the source code included in the software. After

such time, the Designer will make changes on a fixed hourly rate or a negotiated fixed quote basis. While no website design process is able to guarantee bug-free results, the Services will be provided in a workmanlike manner, within local industry standards and tolerances for commercial applications. This warranty does not cover items damaged, modified or misused after delivery to the Owner.

**13. Warranty - Intellectual Property Rights.** The Designer represents and warrants that it has the unencumbered right and power to enter into and perform this Agreement and that the Designer is not aware of any claims or basis for claims of infringement of any patent, trademark, copyright, trade secret, or contractual or other proprietary rights of third parties in or to any programming or materials included by the Designer in the Services or trade names related to the Services. In the event of any claim, charge, suit or proceeding by any third party against the Owner alleging such infringement, the Designer shall defend such claim, charge, suit or proceeding. The Designer shall indemnify and hold the Owner harmless from and against any loss, cost, damage or expense (including attorney's fees and legal expenses) incurred by the Owner that may result by reason of any such claim, charge, suit or proceeding. The Owner shall have the right, if it so desires, to be represented in any such claim, charge, suit or proceeding by counsel. If any of the programming or materials included by the Designer in the Services becomes the subject of an infringement suit, the Owner may terminate this Agreement and shall be entitled to a refund of any payments that it has made to the Designer under this Agreement. This indemnity shall not apply to materials provided by the Owner as contemplated by the following paragraph.

**14. Warranty - Owner.** The Owner represents and warrants to the Designer that the Owner owns (or has a legal license to use) all photos, text, artwork, graphics, designs, trademarks, and other materials provided by the Owner for inclusion in the Website, and that the Owner has obtained all waivers, authorizations, and other documentation that may be appropriate to evidence such ownership. The Owner shall indemnify and hold the Designer harmless from all losses and claims, including attorney's fees and legal expenses, that may result by reason of claims by third parties related to such materials

**15. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES HEREBY SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

**16. Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY PROVISION OF THIS AGREEMENT SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFIT OR LOST BUSINESS, COSTS OF DELAY OR FAILURE OF DELIVERY, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE.

**17. Indemnity.** Each party agrees to defend, indemnify, and hold harmless the other party and its officers, directors, agents, affiliates, distributors, representatives, and employees from any and all third party claims, demands, liabilities, costs and expenses, including reasonable attorney's fees, costs and expenses resulting from the indemnifying party's material breach of any duty, representation, or warranty under this Agreement.

**18. Assignment.** This Agreement is not assignable, in whole or in part, by either party without the prior written consent of the other party. Any attempt to make such assignment shall be void.

**19. Attorney's Fees.** In any legal action between the parties concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

**20. Termination.** This Agreement shall terminate automatically upon the completion of the Services described herein. In the event of such termination, the Owner shall be obligated to pay only for actual services provided by the Designer and for expenditures incurred with the Owner's approval.

**21. Termination on Default.** If a party defaults by failing to substantially perform any provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate this Agreement by providing written notice to the defaulting party. The notice shall describe with sufficient detail the nature of the default. The party in default shall have 14 business days from the effective date of such notice to cure the default(s). Unless waived by the party providing the notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

**22. Taxes.** The Owner shall pay the amount of any sales, use, excise or similar taxes applicable to the performance of the Services, if any, or, in lieu of such payment, the Owner shall provide the Designer with a certificate acceptable to the taxing authorities exempting the Owner from payment of such taxes.

**23. Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the remaining portions of this Agreement shall remain in full force and effect and construed so as to best effectuate the original intent and purpose of this Agreement.

**24. Governing Law / Forum.** This Agreement shall be construed in accordance with the internal laws of the State, without regard to conflict of laws rules. Venue shall be in a court of competent jurisdiction in the State, and both parties expressly consent to jurisdiction in such courts.

**25. Complete Contract / Amendment.** This Agreement supersedes all prior agreements and understandings between the parties for performance of the Services, and constitutes the complete agreement and understanding between the parties. The parties may amend this Agreement in a written document signed by both parties.

#### **Schedule A**

##### **Description of Services and Schedule**

Website Design Services

#### **Schedule B**

##### **Payment Terms**

One-time charge