



**San Diego Web Developer LLC**  
 4128 Alabama Street #4, San Diego, CA 92104  
 Tel: (619) 255-0369 Fax: (619) 245-4147  
 www.sdwebdeveloper.com info@sdwebdeveloper.com



## TERMS OF SERVICE AGREEMENT

**1) Parties.** This agreement is between San Diego Web Developer LLC (PROVIDER) and \_\_\_\_\_ (CLIENT).

- 2) Quality of Services.** PROVIDER will make the best efforts to provide quality and uninterrupted services.
- 3) Account sharing.** CLIENT agrees to keep his account information confident. PROVIDER shall not be responsible for lack of privacy or any other consequences of account or password sharing.
- 4) Acceptable Use Policy.** CLIENT agrees to comply with PROVIDER Acceptable Use Policy. It is contrary to PROVIDER Acceptable Use Policy for any user of any of our services to effect or participate in any of the following activities through a PROVIDER provided service:
- 4.1) To use PROVIDER services to post the following on the Internet:**
    - 4.1.1) Displaying material that exploits children under 18 years of age;**
    - 4.1.2) Displaying material containing nudity or pornographic material of any kind**
    - 4.1.3) Providing material that is offensive to the online community, including but not limited to profanity, bigotry, prejudice, racism, hatred, etc.**
    - 4.1.4) Promoting or providing information about illegal activities, promoting physical harm or injury against any group or individual, or promoting any act of cruelty to animals;**
    - 4.1.5) Defaming any person or group;**
    - 4.1.6) Copyright or other intellectual property infringement, including but not limited to offering pirated computer programs or links to such programs, serial or registration numbers for software programs, copyrighted pictures, etc.**
    - 4.1.7) Promoting or soliciting for participation in multilevel marketing or pyramid schemes.**
    - 4.1.8) Gathering personally identifiable information for unlawful purposes.**
  - 4.2) To use PROVIDER services for illegal activities and activities harmful to others computers, data, software or networks including but not limited to hacker activities, virus creation and distribution, denial of services attacks, email bombs etc.**
  - 4.3) To falsify user information provided to PROVIDER or to other users of the service in connection with use of a PROVIDER service.**
  - 4.4) To send unsolicited emailing to more than twenty-five (25) email users, if such unsolicited emailings could reasonably be expected to provoke complaints.**
  - 4.5) To post ten (10) or more messages similar in content or that are off-topic to Usenet or other newsgroups, forums, email mailing lists or other similar groups or lists.**
  - 4.6) To engage in any of the foregoing activities by using the service of another provider, but channeling such activities through an PROVIDER account, re-mailer, or otherwise through an PROVIDER service or using an PROVIDER account as a mail-drop for responses or otherwise using the services of another provider for the purpose of facilitating the foregoing activities if such use of another party's service could reasonably be expected to adversely affect an PROVIDER service.**
- 5) Non-Compliance with PROVIDER Acceptable Use Policy.** CLIENT understands that services are subject to be suspended or cancelled without compensation for non-compliance with the PROVIDER'S Acceptable Use Policy. Further, CLIENT will be solely responsible for any damages such non-compliance may cause. As a courtesy, PROVIDER will always attempt to contact CLIENT before taking any action.
- 6) Price change.** PROVIDER has the right to change the price of services at any time with 30 days notice.
- 7) Right of refusal.** PROVIDER has the right to refuse services to anyone.
- 8) Right to Display Work.** PROVIDER can display web sites, pictures, graphics, and other works made to CLIENT on PROVIDER portfolio as examples of works performed by PROVIDER.
- 9) Late Payment.** CLIENT agrees to pay additional late fee of 1.5% per month or the maximum permitted by the law of the amount due and non paid.

Agreed and Accepted,

\_\_\_\_\_  
 Signature on behalf of the CLIENT (authorized signature)

\_\_\_\_\_  
 CLIENT Name

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Date



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**10) Work per Hour (Per Hour Charge).** PROVIDER provides services on a per hour charge basis, at a rate of \$60.00 per hour. In this case CLIENT pays per hour. CLIENT trusts PROVIDER based on his own research, review of previous work etc. CLIENT agrees to pay upfront for the hours to be worked by PROVIDER. PROVIDER will control and account for the actual hours and minutes spent and will periodically report them to CLIENT in a report that will include the dates covered by the report, the hours and minutes expended and a summary of the work performed. PROVIDER has the sole right to account for, control and report the actual hours spent. Hours paid for are not refundable. All paid for but not already spent hours remain in credit for future CLIENT usage up to one year after the date they were paid for. All hours in credit expire one year after the date they were paid for. PROVIDER has the right to change the hourly rates at any time with 30 days notice. All work per hour is based on availability.

**11) Marketing and Advertising Campaigns (Commission Based Charge).** PROVIDER provides Internet Advertising Campaigns and Internet Marketing Campaigns on a monthly commission based charge. The monthly commission charge is calculated as a percentage of the money given or authorized by CLIENT to be spent by PROVIDER on advertising or marketing in that month (monthly budget), as follows:

Monthly Budget:	Commission Charge:
\$9,999 or less	20%
\$10,000 to \$19,999	18%
\$20,000 to \$29,999	16%
\$30,000 to \$39,999	14%
\$40,000 to \$49,999	12%
\$50,000 to \$79,999	10%
\$80,000 or more	8%

CLIENT agrees to pay upfront for the PROVIDER monthly commission, before the campaign starts. Advertising campaigns are provided on a monthly basis. The campaign monthly budget always refers to a certain calendar month (example: July 2004) and the amount of money given or authorized by CLIENT to be spent by PROVIDER in the campaign on the referred month. CLIENT will pay PROVIDER upfront the full monthly budget, or CLIENT will provide credit card information to PROVIDER authorizing PROVIDER to use CLIENT'S credit card to pay for advertising and marketing on behalf of CLIENT, up to the money value established by the CLIENT monthly budget. CLIENT will pay for all advertising or marketing done by PROVIDER during the campaign. CLIENT trusts PROVIDER based on his own research, review of previous work etc. PROVIDER will work closely with CLIENT and will apply the best efforts to create a campaign that fulfills the CLIENTS goals and generates the best return on investment possible. PROVIDER has the sole right to control how the monthly budget will be spent and what will or will not be included in the campaign. PROVIDER is not liable or responsible in case that one third party makes an unauthorized charge on CLIENT credit card, but PROVIDER will work with CLIENT and make the best efforts to rectify the situation if such unauthorized charge occurs. PROVIDER will provide CLIENT with a monthly report which will include the dates covered by the report, the third parties in which the money was spent in and how much was spent in each third party. Campaigns can be discontinued by CLIENT on a monthly basis. If the campaign is discontinued, the campaign will be undone and CLIENT will not keep the ads or work created by PROVIDER during the campaigns. Commissions received and all monies paid for or spent in advertising during the campaign are not refundable. Monthly budgets can be established by CLIENT via fax or email, before the campaign starts, and can be changed during the campaign only if the change is to increase the budget for the referred month.

**12) Work per Fixed Price (Flat Fee).** PROVIDER provides services on a fixed price basis. PROVIDER will provide CLIENT with a proposal that describes the services and features of the services to be performed for a fixed price. PROVIDER will apply the best efforts to provide the best service possible for the fixed price paid. PROVIDER has the sole right to decide what will or not be included on the service to be performed for a fixed price, except for what is explicitly listed on the PROVIDER proposal. If there's any dispute about the interpretation of what the proposal includes or not, CLIENT agrees that PROVIDER has the sole right to decide what the proposal includes or not based on PROVIDER sole discretion. If CLIENT requires additional features or additional services not covered by the fixed price work, those may be available for a per hour charge. CLIENT agrees to accept the work within 3 business days after the notification of delivery. Mechanical errors could be reasons for non acceptance (rejection). Examples: someone else's web site was delivered by mistake, missing pages, broken links, missing content etc. Design or work quality cannot be a reason for rejection. Examples: don't like the design, expected something else etc. can not be a reason for rejection. If CLIENT does not respond to inquiry for acceptance within 3 business days the work will be considered accepted by default.

**13) Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Agreed and Accepted,

\_\_\_\_\_  
 Signature on behalf of the CLIENT (authorized signature)

\_\_\_\_\_  
 CLIENT Name

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Date



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**14) Entire Agreement.** This Agreement constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous understandings and agreements between the parties with respect to the subject matter hereof.

**15) Gender.** Where the context so requires, the masculine gender shall include the feminine or neuter, and the singular shall include the plural and the plural the singular.

**16) Liability.** PROVIDER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE SERVICE OR THE PRODUCT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOSS OF USE, LOST DATA, LOSS OF PRIVACY, DAMAGES TO THIRD PARTY EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER ANY CLAIMS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY OR CONTRIBUTION, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR OTHERWISE. FURTHER, PROVIDER WILL NOT CENSOR ANY CONTENT ON THE INTERNET. IT WILL BE CLIENT'S RESPONSIBILITY FOR THE USAGE OF HIS CONTENT AND ANY CONSEQUENCES OF THIS USAGE.

**17) Indemnification.** CLIENT shall indemnify, defend by counsel reasonably accepted by PROVIDER, protect and hold PROVIDER harmless from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants' and attorneys' fees and court costs, demands, causes of action, or judgments directly or indirectly arising out of or related to the services or products provided by PROVIDER to the CLIENT.

**18) Governing Law.** This Agreement was entered into in the State of California and its validity, construction, interpretation and legal effect shall be governed by the laws and judicial decisions of the State of California applicable to contracts entered into and performed entirely within the State of California.

**19) Authority to Execute.** Each of the parties to this Agreement represents and warrants that it has full power to enter into this Agreement and that it hasn't assigned, encumbered, or in any manner transferred all or any portion of the claims covered by this Agreement.

**20) Benefit of Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and except as otherwise provided herein, their respective legal successors and permitted assigns.

**21) Disclaimer of Implied Warranties.** PROVIDER provides all services and products as is and disclaims all other express or implied warranties, including but not limited to implied warranties of merchantability or fitness for a particular purpose, and all such warranties are expressly disclaimed.

**22) No Partnership or Agency.** Nothing in this Agreement shall be construed as creating a joint venture, partnership, agency, employment relationship, franchise relationship or taxable entity between the parties, nor shall either party have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other party hereto, it being understood that the parties are independent contractors vis-a-vis one another.

**23) No Third Party Beneficiaries.** Nothing contained in this Agreement, express or implied, shall be deemed to confer any rights or remedies upon, nor obligate any of the parties hereto, to any person or entity other than such parties, unless so stated to the contrary.

**24) No Refunds.** PROVIDER will not refund collected fees, payments or commissions.

**25) Captions.** The section headings and captions contained herein are for reference purposes and convenience only and shall not in any way affect the meaning or interpretation of this Agreement.

**26) Separability.** If any provision of this Agreement shall be unlawful, void, or for any reason, unenforceable, it shall be deemed separable from, and shall in no way affect the validity or enforceability of, the remaining provisions of this Agreement.

**27) Excused Performances.** PROVIDER shall not be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of the Services, resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, war, strikes or other labor disputes and disturbances, fire, transportation contingencies, shortages of facilities, fuel, energy, labor or materials, or laws, regulations, acts or order of any government agency or official thereof, other catastrophes, or any other circumstances beyond PROVIDER'S reasonable control. In the event of any such delay or failure, performance of the Services shall be deferred to a date and time mutually agreeable by the parties.

**28) Recitals.** The recitals above set forth are incorporated herein by reference.

**29) Arbitration.** Any dispute arising under this agreement shall be resolved by binding arbitration in the city of San Diego and under the rules of the American Arbitration Association

Agreed and Accepted,

\_\_\_\_\_  
 Signature on behalf of the CLIENT (authorized signature)

\_\_\_\_\_  
 CLIENT Name

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Date