

Website Development & Hosting Agreement

The following are terms of a Website Development & Hosting Agreement (the "Agreement") between you (the "Customer" or "you") and Agile Web Designs, LLC. ("Company", "we", or "us") that sets forth the terms and conditions for all services provided by Company (the "Services"). You acknowledge that you have read, understood, and agree to be bound by the terms of this Agreement and to comply with all applicable laws and regulations existing in your jurisdiction.

We reserve the right to amend this Agreement and will notify you of any such changes via electronic mail. Your continued use of the Services after any change to this Agreement constitutes your agreement to be bound by any such changes.

The terms of this Agreement shall govern the use of any new features that augment or enhance the current Services, including the release of new Company Services.

TERMS OF OUR WEB DEVELOPMENT AND HOSTING SERVICES

Section 1 – Payment Terms

You agree to pay company an initial development fee (the "Initial Fee") and a monthly hosting fee (the "Monthly Fee"), billed as a single annual payment, as described in the current pricing sheet attached to this Agreement as Annex A.

Invoices shall be submitted by the Company for payment by Customer. Payment is due upon receipt and is past due ten (10) business days from receipt of invoice. The Initial Fee, set up fees, domain registration fees of any other fees incurred as a result of a work order or job requested by the customer are non-refundable.

The company reserves the right to increase any and all fees described in the current pricing sheet attached to this Agreement as Annex A.

A finance charge of 2% per month on the unpaid amount of an invoice, or the maximum amount allowed by law, will be charged on past due accounts. Payments by Customer will thereafter be applied first to accrued interest and then to the principal unpaid balance. Customer shall also be liable for all attorney and collection fees arising from Company's efforts to collect any unpaid balance of Customer's account(s).

Customers who are current in paying their hosting fees are entitled to one hour of updates to be conducted twice per year, for a total of two hours of update per calendar year (the "Scheduled Updates). The Company reserves the right to determine the timing of any Scheduled Updates. Any work performed by Company on the Customer web site beyond the Scheduled Updates will be billed and invoiced at a standard rate described on Annex A and it will be due upon the receipt of the invoice. Any requests which must be completed within two weeks of a Customer request shall be considered rush requests and shall be billed separately to Customer at the rush rates described on Annex A.

A fee shall be applied to web site transfers of ownership, to cover configuration changes, programming, or any other task that might be required to prepare the web site for a new administrator, customer, or owner. This fee will be charged to the new administrator, customer, or owner.

Section 2 – Term & Termination

This Agreement shall be effective as of the date you place an order for Services, and shall remain in force until it is terminated.

This Agreement may be terminated by either party upon sixty (60) day written notice to the other. This agreement shall also terminate if a party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice of breach. This Agreement may be terminated by Company (i) immediately if Customer fails to pay any fees hereunder; (ii) if Customer fails to cooperate with Company or hinders Company's ability to perform the Services hereunder; (iii) if Customer includes in their customized template website any adult material or material that is deemed illegal, immoral or improper in any jurisdiction; or (iv) if Customer includes in their customized template website any material that infringes the intellectual property of any third party.

Prepaid annual hosting fees are refundable on a prorated basis upon termination of this agreement by Customer. Otherwise, prepaid annual hosting fees are non-refundable.

Section 3 – Service & Hosting Terms

The Company's product is a customized template website design system. Upon payment of the Initial Fee we shall set up and customize the customized template for the Customer. After initial customization the Customer shall update the content of their website through the administration system. Customized template websites shall only be hosted on our servers and cannot be transferred to a third party hosting provider.

We do not monitor the content of our Customer's websites. However, you agree not to include in your customized template website any content that infringes the intellectual property of anyone, including but not limited to copyrighted text, copyrighted images, and trademarks.

Hosting includes 200Mb (megabytes) of storage space for text, documents and pictures.

Company will ensure 99% website uptime for a given month. Scheduled maintenance time of less than five hours each month will not be counted towards the downtime guarantee.

We currently do not offer any e-mail hosting solutions. Customer will need to use a third party to host their e-mail accounts or mail exchange servers.

The Company shall maintain the right to display a link, including a linked image, to our websites, including but not limited to: agilewebdesigns.com and agilesites.agilewebdesigns.com.

Section 4 – Intellectual Property Rights

Our customized templates shall only be hosted within our Company's servers. The customer is not entitled to transfer a customized template website to another hosting provider. The Company shall retain all intellectual property rights in the customized website template, including all copyrights, under all circumstances including the termination of this Agreement by either party.

All data, text and images uploaded by the Customer onto the customized website template shall remain the property of the Customer.

Section 5 – Limitations of Use

You agree to use our Services only for lawful purposes. You are prohibited from any use of the customized template website hosted by Company that would constitute a violation of any applicable law, regulation, rule or ordinance of any nationality, state, or locality or of any international law or treaty, or that could give rise to any civil or criminal liability. Any unauthorized use of our Services including but not limited to unauthorized entry into the Company's systems, misuse of passwords, or misuse of any information posted on the Site is strictly prohibited.

Section 6 – Disclaimer of Warranties

The Company warrants that its Services shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any web site, customized template or hosting service. THIS SECTION SETS FORTH THE ONLY WARRANTIES PROVIDED BY THE COMPANY CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHERWISE.

COMPANY DOES NOT GUARANTEE CUSTOMER'S WEB SITE PLACEMENT ON SEARCH ENGINES.

COMPANY ONLY PROVIDES A SERVICE TO ITS CUSTOMERS. ALL SOFTWARE, INFORMATION, CONTENT, MATERIAL, FILE, DATABASE, ARCHIVE, TECHNIQUE, PROGRAMS OR ANY OTHER TOOL OR DATA

DEVELOPED AND USED FOR THE CREATION AND/OR USAGE OF THE CUSTOMIZED TEMPLATES SERVICES AND HOSTING SERVICE OR SERVICES BELONGS SOLELY TO THE COMPANY, AND IT SHALL NOT BE TRANSFERRED TO CUSTOMERS. CUSTOMERS CAN ONLY UTILIZE THE SERVICES OF THE COMPANY IN COMPANY'S SERVERS AND WITHIN THE COMPANY'S INFRASTRUCTURE.

Section 7 – Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, LOST PROFITS, WHETHER OR NOT FORESEEABLE OR ALLEGED TO BE BASED ON BREACH OF WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY, ARISING UNDER THIS AGREEMENT, LOSS OF DATA, OR ANY PERFORMANCE UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

THE MAXIMUM REMEDY AVAILABLE TO THE CUSTOMER UNDER THIS AGREEMENT IS THE RECOVERY OF THE TOTAL AMOUNT PAID BY CUSTOMER TO THE COMPANY UNDER THIS AGREEMENT, IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO THE LIABILITY.

If we are found to be liable to you, our liability to you or to any third party is limited to the total fees you paid to us in the 12 months prior to the action giving rise to the liability.

Section 8 – Indemnification

You agree to indemnify Company and hold harmless from and against any and all claims, losses, expenses, demands or liabilities, including attorneys' fees and costs, incurred by the Company in connection with any claim by a third party (including any intellectual property claim) arising out of (i) materials and content you submit to, post to or transmit to your customized template website, or (ii) your use of our Services in violation of this Agreement or in violation of any applicable law. You further agree that you will cooperate fully in the defense of any such claims. The Company reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you shall not in any event settle any such claim or matter without the written consent of Company. You further agree to indemnify and hold harmless Company from any claim arising from a third party's use of information or materials of any kind that you submit to, post to or transmit to your customized template website.

Section 9 – Binding Arbitration and Choice of Law

Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof, shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association, at the option of either party, by a panel of three neutral arbitrators. In the event either party demands such arbitration, the American Arbitration Association shall be requested to submit a list of prospective arbitrators consisting of persons experienced in matters involving business disputes. The party bringing or initiating the action shall be responsible for paying all costs for arbitration, including the arbitrators' fees. Each party shall bear its own attorneys' fees, unless attorney's fees may be awarded to the prevailing party as a matter of substantive law. The arbitrator shall have no authority to award any punitive or exemplary damages; add any parties; vary or ignore the provisions of this Agreement; and shall be bound by governing and applicable law. The arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding. The arbitration shall be conducted in English in the County of Santa Clara, California. The provisions of California Code of Civil Procedure Section 1283.05, and the laws of the State of California, are incorporated herein and shall be applicable to the arbitration. Any arbitration award may be entered as a judgment in any court of competent jurisdiction.

Section 10 - Severability

If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall be enforced to the fullest extent possible, and the remaining provisions of the Agreement shall remain in full force and effect.

Section 11 – General Provisions

This Agreement supersedes any previous agreements to which you and Company may have been bound. This Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns. Neither the course of conduct between parties nor trade practice shall act to modify any provision of the Agreement. All rights not expressly granted herein are hereby reserved. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

Annex A

Pricing Sheet

Package / Initial Fee:	Package Description:	Monthly Fee (Billed as an Annual Fee):
Silver / \$795	<ul style="list-style-type: none"> - 5 pages 5 pages of the content is included in our Silver Agile Sites package. Pages usually include: Home Page, About Us, Products, Services and Contact Page. - Custom design Agile Web Designs will create the layout of your website. We will also create the custom header image for your site along with the basic color theme for the site. We will work with you to capture the look and feel of your business and create an online presence that compliments your existing corporate identity. - Photo gallery Different photo gallery options are available for your website. Upload and store up to 200mb of images to our server and organize the pictures to be displayed on the website. Pictures of your business, products, as well as before and after pictures are great for websites. - Adding Content Agile Web Designs will load the site with all the content you provide for each page. - Search engine optimization Your site will include keywords and meta tags relevant to your business for search engine optimization. - Subdomain If you own a domain name we can set up the website to point to your domain or we can provide you with a subdomain. 	\$ 25 monthly / \$300 annual
Gold / \$1,550	<ul style="list-style-type: none"> - 15 pages 15 pages of the content is included in our Gold Agile Sites package. These pages include the basic five pages such as: Home Page, About Us, Products, Services and Contact Page. Additional product pages, services pages, photo gallery pages, menu pages can be included for your website depending on your business. - Custom design Agile Web Designs will create the layout of your website. We will also create the custom header image for your site along with the basic color theme for the site. We will work with you to capture the look and feel of your business and create an online presence that compliments your existing corporate identity. - Photo gallery Different photo gallery options are available for your website. Upload and store up to 200mb of images to our server and organize the pictures to be displayed on the website. Pictures of your business, products, as well as before and after pictures are great for websites. - Document library Agile Sites provides you with 200mb of document storage. Upload your documents and digital images to our server and link them directly to content on your website. A nice feature for additional product information, price lists, quotes, etc. - Adding Content Agile Web Designs will load the site with all the content you provide for each page. - Contact form Custom contact forms are available for clients to communicate with you directly from the website. Depending on the type of business you own, we will setup the appropriate form so your website visitors and clients can easily communicate with you and provide you with relevant information you need. Once the contact form is filled out, the information will be emailed to you. - News and blog module Easily keep clients up to date on your latest announcements, products and service updates using our news and blog module. Log in to the admin system and update your website 24/7. Once the news page is updated, you have the option to automatically send an email to all your clients who signed up to receive your newsletters informing them about your latest update. - Search engine optimization Your site will include keywords and meta tags relevant to your business for search engine optimization. - Flash banner Agile Web Designs will design a flash banner for your website. You will need to provide all the images and content for the flash banner and we will take care of design and make sure it compliments the style and layout of your website. The flash banner can be displayed on any of your website pages. - Subdomain If you own a domain name we can set up the website to point to your domain or we can provide you with a subdomain. 	\$ 25 monthly / \$300 annual

Standard Rate: \$ /hour

Rush Rate: \$ /hour

Transfer of ownership fee: \$