

WEB SITE DEVELOPMENT AGREEMENT

BETWEEN:

Sunny Oasis Internet Corporation, a company duly incorporated under the laws of the Dominion of Canada with its head office in the City of Ottawa (formerly Kanata), in the Province of Ontario

(Hereinafter referred to as "the Provider")

AND:

_____, a company with its head office in the City of _____, in the Province/State

of _____

(Hereinafter referred to as "the Customer")

WHEREAS the Customer has retained the services of the Provider for the design and creation of the Customer's Internet Web Site used in the conduct of the Customer's business on the terms expressed herein;

AND WHEREAS the Provider desires to provide such services to the Customer on the terms specified herein;

NOW THEREFORE WITNESSETH, in consideration of the foregoing premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, the parties agree as follows:

1. DEFINITIONS

- 1.1 "Content" means all text, pictures, sound, graphics, video and other data supplied by the Customer to the Provider pursuant to Sections 2.1 or 3.1, as such materials may be modified from time to time.
- 1.2 "Customer Web Site" means that site on the Internet using "the Customer" or any derivation thereof in its domain name to be created by the Provider under the terms of this Agreement including all Customer Member Sub-sites contained thereon.
- 1.3 "Customer Member Sub-sites" means the sub-sites as set out in Exhibit "A" attached hereto.

- 1.4 "Customer Mirror Site" means the site, if any, established by the Customer, at its option, for purposes of maintaining an image of the Customer Web Site.
- 1.5 "Design Fee" means the fees set forth in Exhibit A for Web Site development services provided pursuant to Section 2.
- 1.6 "Domain Name" means the domain name specified for the Website by the Customer from time to time. The initial Domain Name is specified in Exhibit A.
- 1.7 "Intellectual Property Rights" means any and all now known or hereafter known tangible and intangible
- (a) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works;
 - (b) trademark and trade name rights and similar rights;
 - (c) trade secret rights;
 - (d) patents, designs, algorithms and other industrial property rights;
 - (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; and
 - (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).
- 1.8 "Milestone Delivery Schedule" means the schedule for development of the Work Product set forth in Exhibit A.
- 1.9 "Proprietary Interests" means all patents, trademarks, copyrights, trade secrets, patents, inventions, know-how, domain names and registrations and applications therefor, whether issued or pending, and all rights to apply for the same, anywhere in the world, and all other intellectual property rights.
- 1.10 "Provider Tools" means any tools, both in object code and source code form, which the Provider has already developed or which the Provider independently develops or licenses from a third party, excluding any tools which the Provider creates pursuant to this Agreement. By way of example, Provider Tools may include, without limitation, toolbars for maneuvering between pages, search engines, Java applets, and ActiveX controls. All Provider Tools used in the Website shall be set forth in Exhibit A.

- 1.11 "Specifications" means the Customer's requirements set forth in Exhibit B, as amended or supplemented in accordance with this Agreement.
- 1.12 "Web Site Content" means all information displayed on the Customer Web Site and Customer Member Sub-sites.
- 1.13 "Work Product" means all HTML files, Java files, graphics files, animation files, data files, technology, scripts and programs, both in object code and source code form, all documentation and any other deliverable prepared for the Customer by the Provider in accordance with the terms of this Agreement.

1. **WEB SITE DEVELOPMENT**

- 2.1 Delivery of Initial Content The Customer shall deliver to the Provider all Content that the Customer intends for the Provider to incorporate into the Work Product (the "Initial Content"). The Initial Content shall be in the format(s) specified in Exhibit A.
- 2.2 Development The Provider shall provide design, programming and other consulting services as specified in Exhibit A for the Design Fee set forth therein. The Provider will provide the Work Product to the Customer in accordance with the Milestone Delivery Schedule.
- 2.3 Project Liaisons Each party's primary contact for development efforts shall be the project liaisons specified in Exhibit A or the person otherwise designated in writing by Customer or Provider, as the case may be.
- 2.4 Acceptance The Provider shall make available final versions of the Work Product on a server (the "Mirror Site") for the Customer's review and acceptance. The Customer shall have 10 days to review and evaluate the Work Product (the "Acceptance Period") to assess whether it meets the Specifications as set out in Exhibit B. If the Customer believes that the site is deficient in accordance with Exhibit B it shall provide written notice to the Provider within the said 10 day period specifying the exact nature of the deficiency. Upon the receipt the Provider shall effect any changes to comply with Exhibit B or advise the Customer as to why the site complies with the said Exhibit B. If the parties cannot resolve any conflict pursuant to this section, Section 14.2 shall prevail.
- 2.5 Search Engine Registration When the Provider makes the initial final version of the Work Product available to the Customer, the Provider shall propose the Customer 10 search engines and directories where the Website should be registered. If requested by the Customer, the Provider shall promptly register all Web Site pages with all (or a designated subset) of such sites.

1. **MODIFICATIONS**

- 3.1 If the Customer desires to modify the Web Site at any time during the term of this Agreement, the Customer shall describe the additional services or deliverables to the Provider (the "Change Notice"). In accordance with the terms and conditions for change orders as stipulated on Exhibit "A" the Provider shall submit a change order proposal (the "Change Order") which includes a statement of any additional charges and, if the Change Notice is provided prior to initial acceptance of the Work Product pursuant to Section 2.4, any adjustments to the Milestone Delivery Schedule resulting from the proposed Change Notice. On the Customer's written approval of the Change Order, the Change Order will become a part of this Agreement. Any additional deliverables or changes to the Web Site described in the Change Order shall be subject to acceptance testing at the Mirror Site as described in Section 2.4. The Provider shall quote all charges for the Change Orders at its then-current standard charges, but in no event shall it exceed the per hour rate specified in Exhibit A.

1. CROSS REFERENCE MARKETING

- 4.1 The Customer hereby grants to the Provider the right to provide a link from the Providers Home Page to the Customer's home page to highlight the customer as a client of the Provider. The Provider is further granted the right to use the Customer's name when promoting its services to other clients.
- 4.2 The Customer further grants to the Provider the right to provide a link from the Customer's home page to that of the Provider's home page. The link will appear on the home page and will be located at the bottom of the document for a period of not less than one year. The text shall state in small print "another quality website by the Provider" and will link to <http://www/provider.com/>. The Provider's site shall contain a link to the Customer's site. The said link will appear in a section of the Provider's site called "clients" for a period of not less than one year.

1. PAYMENTS

- 5.1 Fees Fees shall be paid in accordance with the schedule specified in Exhibit A. All fees quoted are exclusive of any sales, use, excise and other taxes which may be levied upon either party in connection with this Agreement.
- 5.2 Expenses The Customer shall reimburse the Provider for all reasonable out-of-pocket expenses which have been approved in advance by the Customer and which are incurred by the Provider in the performance of services hereunder, including but not limited to travel and lodging expenses, long distance calls, and material and supply costs, upon receipt after the Customer's receipt of expense statements including appropriate receipts or other evidence of the expense.

1. TERMINATION

- 6.1 Upon completion of this Agreement the Customer shall remain obligated for any payments accruing hereunder prior to completion of this Agreement.
- 6.2 The respective rights and obligations of the parties under Sections 10, 11, 12, 13 and 14 hereof shall survive expiration or completion of this Agreement for any reason and be ongoing.

1. **PROVIDER WARRANTIES**

- 7.1 Work Product Warranties The Provider warrants that any Work Product, Provider Tools or Provider-made changes to the Content shall not:
 - (a) infringe on the Intellectual Property Rights of any third party or any rights of publicity or privacy;
 - (a) violate any law, statute or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination or false advertising); and
 - (c) there is no outstanding contract, commitment or agreement to which the Provider is a party or legal impediment of any kind known to the Provider which conflicts with this Agreement or might limit, restrict or impair the rights granted to the Customer hereunder.

8. **CUSTOMER COVENANTS**

- 8.1 The Customer covenants:
 - (a) it will provide to the Provider all textual items and graphic images in electronic format with the right to the Provider to modify images where appropriate for publishing on the Customer's site.
 - (b) All text and images provided shall not infringe on the Intellectual Property Rights of any third party or any rights of publicity or privacy;
 - (c) All text and images provided shall not violates any law, statute or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination or false advertising);
 - (d) All text and images provided shall not be is defamatory, trade libelous, unlawfully threatening or unlawfully harassing;

- (e) All text and images provided shall not be obscene, child pornographic or indecent;
- (f) All text and images provided shall not contains any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; or
- (g) To provide the Provider with the necessary information and instructions to create Customer Web Site Content and otherwise perform its undertakings under this Agreement.
- (h) To provide, maintain and operate at its cost, if required, the Customer Mirror Site and all communication resources associated therewith.
- (i) To provide liaison with the Customer members concerning the content of Customer Member Sub-sites

9. **DISCLAIMER OF WARRANTIES**

- 9.1 EXCEPT AS EXPRESSLY STATED HEREIN, THE PROVIDER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS AND SERVICES WHICH ARE THE SUBJECT OF THIS AGREEMENT.

9. **OWNERSHIP**

- 10.1 Any image, graphics, sound, music, custom coding or scripts, text and any other material supplied by the Customer to the Provider will remain the proprietary interest of it's owner, whether its the Customer's or a 3rd party's. The Provider assumes that any items or materials supplied by the Customer for its web pages or Web Site are legally and lawfully obtained by the Customer. The Customer shall assume all the legal rights and responsibilities of obtaining any materials that it supplies to the Provider for its web pages. The Customer shall be held responsible for any unlawfully obtained materials and related fees it supplies to the Provider for its web pages. This would include, but is not limited to legal fees, on a solicitor and client basis, court costs, copyright violation fees, and any and all damages that would apply from a copyright infringement lawsuit.
- 10.2 Any image, graphics, sound, music, custom coding or scripts, text and any other material supplied by the Provider shall remain the proprietary interest of the Provider. The Provider hereby grants to The Customer a perpetual royalty-free license to use, modify (directly or through the use of third parties), copy and make derivative works therefrom without accounting to The Provider and to sub-license the same for the limited purpose of

permitting third parties to support the Customer's internet activities. The Provider reserves the right to use the same images, likeness of, or modified versions of any image, graphics, sound, music, custom coding or scripts, text and any other material supplied by the Provider for any other web page or Web Site that the Provider is working or will work on. All Provider logos, designs, images, and trademarks are copyright.

9. **INDEMNITY**

11.1 The Customer shall defend the Provider against any third party claim, action, suit or proceeding alleging any breach of the covenants contained in Section 8. Subject to Section 11.2, the Customer shall indemnify the Provider for all losses, damages, liabilities and all reasonable expenses and costs incurred by the Provider as a result of a final judgment entered against the Provider in any such claim, action, suit or proceeding.

11.2 The Customer's obligations are conditioned upon the Provider:

- (a) giving the customer prompt written notice of any claim, action, suit or proceeding for which the provider is seeking indemnity;
- (a) granting control of the defense and settlement to the customer; and
- (a) reasonably cooperating with the customer at the customer's expense.

9. **CONFIDENTIAL INFORMATION**

12.1 The Customer's "Confidential Information" is any passwords used in connection with the Website (or the Mirror Site), all Server Logs, all Work Product and documents related to the Work Product, any Content which the Customer designates as confidential, and any other materials of the Customer which the Customer designates as confidential. The Customer's "Confidential Information" includes the Web Site itself until such time as the Customer decides to make the Web Site publicly available to users. The Provider's "Confidential Information" is defined as the source code of any Provider Tools. The Provider understands and agrees that the Customer does not want any other Confidential Information of the Provider, and should the parties believe that additional confidential information of the Provider needs to be disclosed to the Customer, the parties shall execute a separate non-disclosure agreement regarding such information. Each party shall hold the other party's Confidential Information in confidence and shall not disclose such Confidential Information to third parties nor use the other party's Confidential Information for any purpose other than the purposes of this Agreement. The foregoing restrictions on disclosure shall not apply to Confidential Information which is

- (a) already known by the recipient;

- (b) becomes, through no act or fault of the recipient, publicly known;
- (b) received by recipient from a third party without a restriction on disclosure or use; or
- (b) independently developed by recipient without reference to the other party's Confidential Information.

13. **LIMITATIONS ON LIABILITY**

- 13.1 THE CUSTOMER'S EXCLUSIVE REMEDY FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) WILL NOT (A) EXCEED THE ACTUAL DOLLAR AMOUNT WHICH WAS PAID PURSUANT TO EXHIBIT A ATTACHED HERETO, OR (B) INCLUDE ANY INCIDENTAL, CONSEQUENTIAL, EXTEMPORARY OR PUNATIVE DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, FILE, PROFIT, GOOD WILL, TIME, SAVINGS OR REVENUE.

14. **GENERAL PROVISIONS**

- 14.1 Governing Law, Jurisdictional Matters This agreement takes effect when accepted by SUNNY OASIS INTERNET CORPORATION in Ontario, Canada. It is to be governed by and construed under the laws of the Province of Ontario and Canada. The federal and provincial courts of the Province of Ontario shall have exclusive jurisdiction to adjudicate any non-arbitrable dispute arising out of this agreement. The Customer hereby expressly consents to the jurisdiction of the Courts of Ontario.
- 14.2 Arbitration Any differences between the Provider and the Customer that cannot be resolved shall be resolved pursuant to the provisions of the *Arbitration Act* (Ontario), R.S.O 1990.
- 14.3 Further Assurances The Provider shall cooperate with the Customer, both during and after the term of this Agreement, in the procurement and maintenance of the Customer's rights to intellectual property created hereunder and to execute, when requested, any other documents deemed necessary by the Customer to carry out the purpose of this Agreement.
- 14.4 Compliance With Laws The Provider shall ensure that its Web Site design and its web hosting services will comply with all applicable international, national, and local laws and regulations.
- 14.5 Severability; Waiver If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties 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.

- 14.6 Headings Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.
- 14.7 Assignment The Customer's rights and obligations under this agreement may not be transferred or assigned directly or indirectly without the prior written consent of SUNNY OASIS INTERNET CORPORATION, which consent shall not be unreasonably refused.
- 14.8 Independent Contractors The parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party shall have the power to obligate or bind the other party. Personnel supplied by the Provider shall work exclusively for the Provider and shall not, for any purpose, be considered employees or agents of the Customer. The Provider assumes full responsibility for the acts of such personnel while performing services hereunder and shall be solely responsible for their supervision, direction and control, compensation, benefits and taxes.
- 14.9 Notice Any notices required or permitted hereunder shall be given to the appropriate party at the address set out in Exhibit A or at such other address as the party shall specify in writing. Such notice shall be deemed given: upon personal delivery; if sent by telephone facsimile, upon confirmation of receipt; or if sent by certified or registered mail, postage prepaid, 5 days after the date of mailing.
- 14.10 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.
- 14.11 Force Majeure The Provider shall be excused from performance hereunder for any period to the extent the Provider is prevented from performing any services pursuant hereto, in whole or in part, as a result of any causes beyond its reasonable control, and such non-performance shall not be a default hereunder or a ground for termination hereof so long as the sale is temporary in nature and does not unreasonably interfere with the Customer's business and operations and the Provider diligently seeks to alleviate the cause of disruption in performance through all reasonable means.
- 14.12 Entire Agreement This Agreement, including the Exhibits attached hereto, sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. It may be changed only by a writing signed by both parties. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

14.13 Binding Effect This Agreement and the rights granted hereunder shall be binding upon and inure to the benefit of the parties and their respective successors, legal representatives and permitted assigns.

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement as of the date first written above.

Provider:

Customer:

By:_____

By:_____

Title:_____

Title:_____

EXHIBIT A

Services and Fees

1. Content

All Content shall be provided to Provider by Customer in the formats specified below:
 All text shall be provided in [ASCII, RTF, PageMaker, WordPerfect, Word, PDF, or HTML].
 All graphics shall be provided in [TIFF, GIF, JPEG, or PMP format].

2. Web Site

The Web Site shall not include any Provider Tools except for the following specified below:

3. Services

For the Design Fee, the Provider shall provide the following services in accordance with the Milestone Delivery Schedule below.

4. Milestone Schedule

The Milestone Schedule for the project is shown on the chart below:

Milestone Description	Responsibility	Date
1. Agreement on site goals		
2. Provider and Customer agree on list of items to be included in Web Site, sorted into topical categories		
3. The Provider develops design parameters for pages		
4. The Customer tests and prototypes design		
5. The Customer specifies changes to the prototype that are required to conform to Specifications and/or to address issues not contemplated by Specifications		
6. The Provider resubmits revised		

prototype

7. The Provider makes final version of Work Product available
10. Customer accepts final version of Work Product

5. Fees

Design fee schedule:

- (a) On execution of agreement - _____
- (b) Final version of product on server available for review in accordance with Section 2.4 - _____
- (c) On customer final acceptance - _____

Maximum per-hour charge: _____

Other charges:

6. Project Liaisons

7. Provider Liaison

8. Customer Liaison

9. Domain Name

http://_____

10. Address for Service

If to the Provider: 99 Yoho Drive
Kanata, Ontario, K2M 2V3

If to the Customer:

EXHIBIT B

Web Site Specifications

1. [Include other specifications required by the Customer].