# Web Design and Development Contract

Company/Client _____

Phone _____ Fax _____

Authorized Representative of the Client _____

Address _____

City _____ State _____ Zip Code _____

Email address _____

Present URL _____

User Name _____ Password _____

**Terms of Agreement**

**1. Authorization.** Hereafter, _____

will be known as the "Client" and **Isaac Simchon** will be known as the "Developer." Client is engaging Developer as an independent contractor for the specific purpose of developing a website Project.

The Developer will establish a Web server account for hosting. The Client hereby authorizes the Developer to access its account and authorizes the Developer with "write permission" for the Client's Web page directories.

**2. Domain Registration.** The Client will use domain name(s) _____

_____.

**3. Training.** The Developer will provide email and telephone assistance to the Client's designated representatives regarding management of the Client's web site. Additional training fees for groups on-site at the Client's place of business, are listed in Exhibit A of this agreement.

**4. Base Package.** This agreement contemplates up to 10 standard branding web pages with layout, graphic creation included based upon the _____ Web site. Ten (10) meetings are included or up to four (4) hours of consultation as part of the base package. Additional meetings and consultations will be billed at an hourly rate.

**5. E-commerce.** E-commerce includes a product list with pictures and description, product selection and insertion into a shopping cart, customer registration and account creation, automatic merchant transactions, optional pass-through to Google Checkout or PayPal, and report generation. The Client may select third party e-commerce software. Any desired e-commerce features are listed in Exhibit A.

**6. Text.** The Client should supply final text unless otherwise specified in Exhibit A. 500 words per page approximate standard if not supplied via digital media. Web pages of more than 2,000 words of text will be subject to additional fees for increased formatting time. Failure to supply the Developer complete text and graphics content for all contracted web pages within six weeks of this contract signing date, the entire amount of the contract becomes due and payable. If the client has not submitted complete text and graphics content within two months after contract signing, an additional continuation fee of 10% of the total contract price will also be assessed each month until the website has been completed per contract specifications.

**7. Links.** This agreement includes an average of 10 external or relative links per page unless otherwise specified in Exhibit A.

**8. Cross Browser Compatibility.** The developer agrees to create a Web site viewable by the most recent versions of Firefox, Chrome, and Microsoft Internet Explorer. Although presentation may not identical among browsers, critical elements of each page will be displayed. Client acknowledges that some advanced techniques (e.g., HTML5 and video) may require a more recent browser version, different brand, or additional browser plug-in. Client is also aware that as new browser versions are developed, the new browser versions may not be backward compatible. In the absence of a Maintenance Agreement time spent to redesign a site for compatibility due to the introduction of a new browser version will be separately negotiated and in addition to the base price of our agreement.

**9. Graphic Creation.** Developer will create, capture or receive from the Client all the graphic elements necessary to complete the Client's web site. This includes creating ancillary images, animated graphics and banner advertisements. This also includes photography or scanning services as listed below. However, creation of banner advertisements are listed separately in Exhibit A of this agreement.

**10. Photography.** For Client's residing in the NYC area, the Developer will at the request of the Client, visit the Client's place of business and capture up to 25 images for inclusion on the Client's web site. Photographic retouching of these images is included in this agreement. If more than 10 images need to be photographed the charge
for each will be $10 after the 25-image allowance has been reached.

**11. Scanning.** Up to 20 scanned images are included in the base contract price. If more than 20 images need to be scanned, the charge for each will be $10 after the 20-image allowance has been reached.

**17. HTML5 Canvas.** All of our projects are designed in HTML5 canvas at no additional cost.

**18. Audio/Video.** Audio & Video are included in this contract at no additional cost.

**19. Secure Certificate.** If the Client selects an e-commerce enabled site, the Client is encouraged to obtain a secure certificate for on-line transactions. The Client understands that if they do not obtain their own secure certificate, design capabilities on the shopping cart itself may be limited.

**20. Merchant Account.** If the Client's Web site requires the ability to accept credit cards, the Client will need a Merchant Account. The Client understands that any charges necessary to secure the Merchant Account are not covered by this agreement.

**21. CyberCash / Authorize.net.** If the Client has a high volume or high sales web site, real-time credit card processing will be desired as an addition to _____ or _____ technology. In this instance, the Developer will assist the Client in obtaining this service. Any charges related to this service are payable to _____ _____ or _____ will be billable to the Client as an addition to the base price of this agreement.

**22. Cold Fusion, ASP.** Sites requiring database design may require Microsoft ASP or Macromedia Cold Fusion technology. Any charges applicable to ASP or Cold Fusion are in addition to the base price of our agreement and will be listed in Exhibit A.

**23. Databases.** This agreement does not include a provision for the creation of a database unless specifically listed in Exhibit A.

**24. Payment Terms / Work Flow.** A minimum deposit of one third (33%) of the total amount is required to commence work. Once the first deposit is received by the Developer, basic site design concepts will be put on-line for the Client's viewing and approval. Alternatively, Developer may show Client the designs in person. Communication between the Developer and the Client is crucial during this phase to ensure that the ultimate publication will match the Client's taste and needs. Upon completion of this stage, the Client will be asked to confirm acceptance for the basic site design via email or by signing a printed copy of the design. Once this acceptance is received from the Client, the work necessary to complete the project will begin, and the second third of the total amount will be paid. Clients should continue, however, to continually view updates to the site and express their preferences or dislikes to the Developer. Upon completion of the web site, an email or letter and invoice will be sent to the Client advising the Client that the work has been completed. Final payment of the remaining 33% balance plus any additional charges incurred will due within fifteen (15) business days after delivery of completion email or letter and invoice. If the fifteen (15) day minimum is not met an additional charge of 10% is due. If payment is not made within thirty (30) days of notification, simple interest will accrue on the balance owed at a rate of 18% from the date the 10% penalty was levied. Developer reserves the right to remove all Web content from the Internet if payment is not made within thirty (30) days after delivery of our completion notification. Most frequently, problems with timely payment are the result of poor communication. If a payment delay is anticipated, please contact the Developer to discuss potential problems in advance. If problems are anticipated we may be able to accommodate an alternate arrangement.

**25. Maintenance Agreements.** Maintenance Agreements are negotiated on a individual basis, as each client has differing needs. Developer offers a maintenance agreement in which the customer pays on an "as needed" hourly basis.

**26. Third Party or Client Page Modification.** Clients may elect to independently edit or update their web pages after completion. Developer will update the web site at an hourly rate of $_____. There is a one-hour minimum. In this regard, Clients are encouraged to obtain a Maintenance Agreement.

**27. Web Site Backup.** The Developer will backup the Client's web site onto portable storage at the Client's request upon completion of the site. Additional copies are available for $_____ each.

**28. Search Engine Registration.** The Developer will optimize the Client's web site with appropriate titles, keywords, descriptions and text and can thereafter submit the Client's web site to some of the major search engines and directories.

**29. Additional Expenses.** Client agrees to reimburse the Developer for Client-requested expenses. Examples include:

- Special font request
- Unique photography request
- Client-specific software request

**30. Copyrights and Trademarks.** Client represents to the Developer and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to the Developer for inclusion in the Client's web site 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 (indemnify) the Developer and its subcontractors from any claim or suit arising from the use of such elements furnished by the Client.

**31. Limited Liability.** Client agrees that any material submitted for publication will not contain anything leading to an abusive or unethical use of the Web Hosting Service, the Host Server or the Developer. Abusive and unethical materials and uses include, but are not limited to, pornography, obscenity, nudity, violations of privacy, computer viruses, harassment, any illegal activity, advocacy of an illegal activity, and copyright / patent / trademark infringement. Client hereby agrees to indemnify and hold harmless the Developer from any claim resulting from the Client's publication of material or use of those materials.

It is also understood that the Developer will not publish information, which may be used by another party to harm another. The Developer will also not develop a pornography or otherwise unethical web site for the Client. The Developer reserves the right to determine what is and is not unethical content.

**32. Indemnification.** Client agrees that it shall defend, indemnify, save and hold the Developer harmless 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 web site. 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, employees or assigns.

Client also agrees to defend, indemnify and hold harmless the Developer against Liabilities arising out of any injury to person or property caused by any products or services sold or otherwise distributed over the Client's web site. This includes infringing upon on the proprietary rights of a third party, copyright infringement, and delivering any defective product or misinformation which is detrimental to another person, organization, or business.

**33. Ownership.** Copyright of the finished assembled work of web pages produced by the Developer and graphics shall be vested with the Client upon final payment for the Project. This ownership includes design, photos, graphics, source code, work-up files, text, and any program(s) specifically designed or purchased on behalf of the Client for completion of this Project.

**34. Design Credit.** Client agrees that the Developer may put a byline on the bottom of their index.html or main.html Web page for establishing design and development credit. Client also agrees that the Web Site created for the Client may be included in the Developer's portfolio.

**35. Nondisclosure.** The Developer, its employees and subcontractors agree that, except as directed by the Client, it will not at any time during or after the term of this Agreement disclose any confidential information. Likewise, the Client agrees that it will not convey any confidential information obtained about the Developer to another party.

**36. Completion Date.** We agree to work expeditiously to complete this Project no later

than:_____

**37. Cancellation.** Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Client:
   Institution:       _____
   Street:            _____
   City, State, Zip:  _____
   Phone:            _____
   FAX:               _____

Developer:
   Name:            _____
   City, State, Zip:  _____
   Phone:            _____
   FAX:               _____

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.
 A certified letter is required to cancel the contracted Project at the request of the Client. In the event that work is postponed or canceled at the request of the Client by certified letter, the Developer shall have the right to retain/claim full payment of the current phase of development. In the event this amount is not sufficient to cover Developer time and expenses, additional payment will be due. If additional payment is due, this will be billed to the Client within 10 days of notification via certified letter to stop work. Final payment will be expected under the same terms as listed above.

**38. Conflicting Terms.**  In the event of a conflict between the terms of this Contract (including any and all attachments thereto and amendments thereof) and the terms of Exhibit A, the terms of Exhibit A shall control.

**39. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the Project subject matter. It supersedes all previous agreements and understandings between the parties and each party acknowledges that, in entering into this agreement, it does not do so on the basis of or in reliance upon any representations, promises, undertakings, warranties or other statements (whether written or oral) of any nature whatsoever except as expressly provided in this Agreement. Thus, this Contract and attached Exhibits constitute the sole Agreement between the Developer and the Client. The Contract becomes effective when signed by both parties.

**40. GOVERNING LAW.** This contract shall be governed by the laws of the State of _____ except where the Federal supremacy clause requires otherwise.

**41. NO ARBITRATION.**  Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**42. Statute of Limitations.** Parties agree that any action in relation to an alleged breach of this Agreement shall be commenced within one year of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute.

**43. Severability.** If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.

**44. Attorney Fees.** In the event of litigation relating to the subject matter of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs resulting therefrom.

**45. Non-Waiver.** Failure by one party of this Agreement to require performance of any provision(s) shall not affect that party's right to require subsequent performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

**46. Force Majeure.** The affected party is excused from performance under this contract for the duration of the Force Majeure event thereby extending the completion date. If the Force Majeure event continues past the agreed Contract completion date, the Contract may be terminated and both parties excused from their liabilities. Force Majeure events include, but not limited to, fire, explosion, strikes, riots, terrorist activity, war, acts of nature which prohibit travel, and acts of God.

**47. Partnership or Agency.** The relationship between parties is not to be construed as a partnership or agency and this Contract does not create either form of relationship.

**48. Consequential Damages.** Neither party to this Agreement will be held responsible for consequential (indirect) damages (e.g., loss of profit) because of any alleged failures by the other party.

**49. Signature Authority.** Both parties warrant that they have read and understand the terms set forth in this agreement. Each party hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of Other Party and that this Agreement is binding upon Other Party in accordance with its terms.

**Name**_____  **Title**_____

**On behalf of the Client** _____ **Date** _____

**Name**_____  **Title**_____

**On behalf of the Developer** _____ **Date** _____