hometown design studio

TERMS OF SERVICE

In addition to the terms in the Agreement, the parties agree that the following terms of service apply:

DEFINITIONS

1.1 **"CLIENT CONTENT"** means text, pictures, graphics, sound, video and other data supplied by Client to Provider pursuant to this Agreement. Any Client Content provided to Provider by Client shall be in the formats specified below:

   a. All text shall be provided in TXT, Word, PDF or HTML.
   b. All graphics shall be provided in a vectorized, editable, digital format, such as EPS, AI, or PDF. If Client is unable to provide a vector image or graphic, Client should provide graphics in .JPG, .PNG or .GIF format. However, Provider cannot guarantee the quality of the graphic to be displayed.
   c. All photography supplied should be in a high resolution digital format, preferably .JPG or .PNG and should be at or larger than 1024x768. If Client is unable to provide photography in high resolution digital format, Provider cannot guarantee the quality to be displayed.

1.2 **"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).

1.3 **"PROVIDER TOOLS"** means any tools, both in object code and source code form, which Provider has already developed or which Provider independently develops or licenses from a third party, excluding any tools which 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 Website shall be set forth in Agreement.

1.4 **"SPECIFICATIONS"** means the detailed description of deliverables to be prepared for Client by Provider.

1.5 **"WEBSITE"** means the user interface, functionality, Client Content, and other Work Product made available on pages under the domain page.

1.6 **"WORK PRODUCT"** can include Website, text, copy, photography, graphics, sound, video and other data or combination of these, created or purchased by Provider to meet the Specifications. Any Content provided by Provider shall be as specified below:

   a. Website includes the user interface, functionality and content made available on pages under a domain, including all HTML files, Java files, graphics, sound, video, and other data, technology, scripts and programs, both in object code and source code form, all documentation and any other deliverables prepared for

Client by Provider in accordance with the terms of this Agreement.

b. All text and copy shall be provided in TXT, Word, PDF or HTML.
c. All graphics shall be provided in a vectorized, editable, digital format, such as EPS, AI, INDD, PSD, or PDF.
d. All photography supplied will be in a high resolution digital format,.JPG or .PNG and will be at or larger than 1024x768. Stock Photography may be used in Work Product.

WEBSITE DEVELOPMENT

2.1   **PROVIDER TOOLS.** If any Provider Tools are incorporated into or used in conjunction with the Website, or any Provider Tools are used to manipulate content for distribution on the Website, then Provider hereby grants to Client a worldwide, non-exclusive, non-sublicensable (through multiple tiers), assignable, royalty-free, perpetual, right to use, reproduce, distribute (through multiple tiers), create derivative works of, publicly perform, publicly display, digitally perform, make, have made, sell, offer for sale and import such Provider Tools in any media now known or hereafter known. Throughout the term of the Agreement and immediately upon termination, Provider shall provide to Client the most current copies of any Provider Tools to which Client has rights pursuant to the foregoing, plus any related documentation.

2.2   **WEBSITE COMPATIBILITY.** Provider will test Website on multiple versions of major browsers, including Apple Safari, Google Chrome, Microsoft Internet Explorer, and Mozilla Firefox. Provider will also test Website on at least one iOS device and one Android device. Provider makes no guarantees or warranties that all users across platforms will have same user experience. Provider will exercise its best efforts in good faith to present a similar version of Website across various platforms, browsers, devices, and environments.

2.3   **TECHNICAL SUPPORT.** Provider will work in good faith and exercise best efforts to provide technical support once Website has been accepted (pursuant to section 3.2). Provider will provide initial technical support at no cost to ensure proper functionality. Should further technical support and/or escalation of support be required, Provider will outline work needed, and Client may incur additional fees as necessary to resolve the pending technical support matter.

2.4   **SSL TECHNOLOGY.** Secure Socket Layer (SSL) technology adds an extra layer of protection to a website and encrypts Confidential Information via a SSL Certificate. The Provider recommends the use of SSL technology. Client is solely responsible to agree to, request, and make payment for the SSL certificate from either the Provider or Client hosting company. Failure to install a SSL certificate may put Confidential Information at risk. Provider is not liable for any liability due to insufficient security.

WORK PRODUCT

3.1 **MODIFICATIONS.** If Client desires to modify the Work Product (including the Specifications as described in Agreement) at any time during the term of this Agreement, Client shall describe the additional modifications requested to Provider. Provider shall provide a statement of any additional charges resulting from the proposed modification. On Client's written approval the modification will become a part of and become incorporated into the Agreement.

3.2 **ACCEPTANCE.** Provider shall make available a complete version of the Work Product (Websites will be made available on a "Demonstration Site") for Client's review and acceptance. Client shall have fourteen (14) days to review and evaluate the Work Product (the "Acceptance Period") to assess whether it meets the Client's specifications. If Client rejects the Work Product during the Acceptance Period, Client may, in its sole discretion, elect to: (a) request Provider to provide revised Work Product for acceptance; (b) complete the Work Product on Client's own and Provider keeps Project Deposit and payment for work completed becomes due; or (c) terminate the Agreement, and Provider will retain Project Deposit, in which case Section 5.2 will apply.

3.3 **CLIENT LICENSE**. Client hereby grants to Provider a non-exclusive, non-sublicensable, royalty-free, worldwide license to reproduce, distribute, publicly display, discuss and digitally perform the Work Product on any platform, device, service, website, or means of communications that may be used by Provider to promote and market Provider's services after Acceptance of Project. Client grants no rights other than those explicitly granted herein, and Provider shall not exceed the scope of this limited license.

3.4 **TRADEMARKS.** Subject to the terms and conditions of this Agreement, each party hereby grants to the other party a limited, non-exclusive, non-sublicensable, royalty-free, worldwide license to use such party's trademarks, service marks, trade names, logos, or other commercial or product designations (collectively "Marks") for the purposes of creating content, directories, or indexes and for marketing and promotion. The trademark owner may terminate the foregoing license if, after seven (7) days written notice to licensee noting the violation of the terms of this Agreement, the licensee's use of the Marks does not conform to the standards set forth herein. Title to and ownership of the owner's Marks shall remain with the owner. The licensee shall use the Marks exactly in the form provided and in conformance with the trademark usage policy provided herein. The licensee shall not form any combination Marks with the other party' Marks. The licensee shall not take any action inconsistent with the owner's ownership of the Marks.

3.5 **COPYRIGHTS.** Client guarantees that all elements of any Client Content provided are either owned by Client or Client is a licensed user acting within the scope of said license. After Work Product has been accepted (pursuant to section 3.2), final payment will be due. After final payment is made, Client will own all Work Product therein, unless licensed to or from third party, in which case third party will retain ownership and any and all rights available to it.

3.6 **THIRD PARTY SERVICES.** Provider is authorized to act on Client's behalf to submit, update, setup or administer accounts, page or pages on third party websites including, but not limited to, Google, Yahoo, Bing, Facebook, Twitter, LinkedIn, Infogroup, Localeze, Acxiom, hosting accounts, domain registration websites, and/or any third party websites or services as required from time to time during the duration of this Agreement. Upon termination of this Agreement, all third party authorizations shall be revoked from Provider and all account information for each respective third party service shall be returned to Client. Any third party authorization of service will only occur after full payment of any and all Fees has been paid pursuant to Agreement. Client will be responsible for all third party services provided.

PAYMENT

4.1 **FEES.** All Fees are outlined in Agreement.

4.2 **THIRD PARTY FEES.** Client is responsible for payment to third parties directly for software and services such as Constant Contact Email, MailChimp Email, Google Adwords, Facebook Advertising, etc. Hometown Design Studio will not be liable for fees, late fees, penalties, or other fees from third parties.

4.3 **PAYMENT TERMS.** All payments must be made in U.S. Dollars. Provider will accept checks, credit cards and money order as form of payment. All checks must be made payable to "**Hometown Design Studio, Inc.**". Credit Card payments will be subject to a 3.5% processing fee.

4.4 **EXPENSES.** Client shall reimburse Provider for all reasonable out-of-pocket expenses which have been approved in advance by Client and which are incurred by Provider in the performance of services hereunder, including but not limited to travel and lodging expenses, long distance calls, video or webcast customer support services, and material and supply costs, within thirty (30) days after Client's receipt of expense statements including appropriate receipts or other evidence of expense.

4.5 **SCHEDULE OF PAYMENT.** Schedule of Payment are outlined in Agreements.

4.6 **LATE FEES / PENALTIES FOR NON-PAYMENT.** Any invoice not paid within fourteen (14) days of due date will be assessed a late fee of 5%. Should invoice remain unpaid for thirty (30) days after due date, Provider will reserve the right to remove Work Product and/or Website from the Internet and stop rendering Support Services for non-payment, or exercise any termination options available as the Provider may see fit. Provider reserves the right to remove Work Product and/or Website from the Internet for payments that do not clear.

TERMINATION

5.1 **TERMINATION.** Except as otherwise provided for herein, either party may terminate this Agreement upon providing thirty (30) days written notice. Either party may terminate this Agreement upon the material breach of the other party, if such breach remains uncured for fourteen (14) days following written notice to the breaching party.

5.2 **TERMINATION PRIOR TO ACCEPTANCE OF WORK PRODUCT.** In the event that Client terminates this Agreement prior to Acceptance of the Work Product pursuant to section 3.2, Client shall return all Work Product to Provider, remove all digital copies of Work Product from devices, and Provider shall return any Client Content to Client, and Provider will retain the non-refundable initial deposit for time incurred and work completed. All licenses granted hereunder shall terminate.

5.3 **TERMINATION AFTER WEBSITE PUBLISHED.** Refunds will not be issued for completed Websites that have been accepted pursuant to section 3.2 and published on the internet. For all other services, Provider will refund any amounts paid in advance for services not yet rendered.

WARRANTIES

6.1 **PROVIDER WARRANTY.** Provider warrants that: (a) any Work Product or Provider Tools will conform to their applicable Specifications or acceptance criteria when delivered; and (b) there is no outstanding contract, commitment or agreement to which Provider is a party or legal impediment or any kind known to Provider, which conflicts with this Agreement or might limit, restrict, or impair the rights granted to Client hereunder.

6.2 **DISCLAIMER. EXCEPT AS SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PROVIDER IS HEREBY DISCLAIMED AND NOT RESPONSIBLE FOR ANY SUPPORT OR SUPPORT FEES RELATED TO HOSTING MANAGEMENT OR SERVICING, INCLUDING BUT NOT LIMITED TO CYBER ATTACKS, DIGITAL ATTACKS, HACKING, PHISHING, DOMAIN ISSUES, IP ADDRESS ISSUES, PROXY ISSUES, BACKUPS, SECURITY PATCHES, OR E-MAIL ISSUES (UNLESS OTHERWISE NOTED IN SEPARATE AGREEMENT).**

OWNERSHIP

7.1 **OWNERSHIP OF WORK PRODUCT.** Provider hereby assigns Client all right, title and interest in and to all Work Product and documentation produced pursuant to Client's requests for services hereunder, including, without limitation, all applicable Intellectual Property Rights thereto. If Provider has any such rights that cannot be assigned to Client, Provider waives enforcement of such rights, and if Provider has any rights that cannot be assigned or waived, Provider hereby grants to Client an exclusive, irrevocable, perpetual, worldwide, fully paid license. Provider acknowledges that there are, and may be, future rights that Client may otherwise become entitled to with respect to the Work Product that does not yet exist, as well as new uses, media, means and forms of exploitation through the universe, exploiting current or future technology yet to be developed, and Provider specifically intends the foregoing assignment of rights to Client to include all such known or unknown uses, media and forms of exploitation throughout the universe.

7.2 **OWNERSHIP OF CLIENT CONTENT.** As between Provider and Client, any Client Content given to Provider by Client under this Agreement (or otherwise), shall at all times remain the property of the Client or its licensor. Provider shall have no rights in such Client Content other than the limited rights to use such contents for the purposes expressly set forth in this Agreement.

LIABILITY

8.1 **INDEMNITY.** Client shall defend Provider against any third party claim, action, suit or proceeding alleging any breach of covenants Client may have with third party. Client shall indemnify Provider for all losses, damages, liabilities and all reasonable expenses and costs incurred by Provider as a result of final judgment entered against Provider in any such claim, action, suit or proceeding.

8.2 **MECHANICS OF INDEMNITY.** The indemnifying party's obligations are conditioned upon the indemnified party: (a) giving the indemnifying party prompt written notice of any claim, action, suit or proceeding for which the indemnified party is seeking indemnity; (b) granting control of the defense and settlement to the indemnifying party; and (c) reasonably cooperating with the indemnifying party at the indemnifying party's expense.

8.3 **LIMITATIONS ON LIABILITY. EXCEPT FOR AS SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (HOWEVER ARISING, INCLUDING, BUT NOT LIMITED TO NEGLIGENCE ON THE PART OF EITHER PARTY) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT WILL PROVIDER BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY DAMAGES INCLUDING, BUT NOT LIMITED TO, SERVICE INTERRUPTIONS CAUSED BY ACTS OF NATURE, THE HOSTING SERVICE, OR ANY OTHER CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF PROVIDER, SUCH AS ANY INABILITY TO OPERATE SERVICES, SERVER, FAILURE OF ANY SERVICE PROVIDER, OR TELECOMMUNICATIONS CARRIER, OR ANY DAMAGE AS A RESULT OF CLIENT'S NEGLIGENCE, OR NEGLIGENCE BY ANY OTHER THIRD PARTY. PROVIDER WILL NOT BE LIABLE FOR ANY SUPPORT OR SUPPORT FEES RELATED TO HOSTING MANAGEMENT OR SERVICING, INCLUDING BUT NOT LIMITED TO CYBER ATTACKS, DIGITAL ATTACKS, HACKING, PHISHING, DOMAIN ISSUES, IP ADDRESS ISSUES, PROXY ISSUES, BACKUPS, SECURITY PATCHES, OR E-MAIL ISSUES (UNLESS OTHERWISE NOTED IN SEPARATE AGREEMENT).**

CONFIDENTIAL INFORMATION

9.1 **CLIENT'S CONFIDENTIAL INFORMATION.** Client's "Confidential Information" shall include any passwords used in connection with the Website, all server logs, all Work Product documents, drafts, mock ups, exhibits and/or documents related, business practices of Client, Client product information, manufacturing process, delivery process, market research data, employee information, Client/user information, intellectual property, intellectual design, business practices, or any Client Content which Client designates as confidential, and any other materials of Client which Client designates as confidential or proprietary. Confidential Information also includes the Work Product itself

until such time as Client decides to make the Work Product publicly available for Client's users. Provider's "Confidential Information" is defined as the source code of any Provider Tools or any source code developed, in any form (including but not limited to css, html, asp, java, perl, ruby, or others) by the Provider. Upon Acceptance, any source code developed by Provider will be published to the public and will no longer be protected under the confidentiality restrictions set forth herein. Provider understands and agrees that Client does not want any other Confidential Information of Provider, and should the parties believe that additional confidential information of Provider needs to be disclosed by Client (or confidential information of Client needs to be disclosed by Provider), 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 as necessary to perform under 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, (c) received by the recipient from a third party without a restriction on disclosure or use, or (d) independently developed by recipient without a reference to the other party's Confidential Information. Provider expressly disclaims any duties to safeguard and protect Client Confidential Information, except as set forth herein.

GENERAL PROVISIONS

10.1 **CHANGES TO AGREEMENT.** Provider reserves the right to add to or to modify this Agreement. Provider will provide notice of any changes to Agreement via electronic mail. Changes to the Agreement will not take effect until at least fourteen (14) days after the date the notice is sent to Client. If Client does not agree to changes, Client may exercise rights for termination as outlined herein. If Client does not notify Provider in writing of rejection of changes within 30 days of notice date, the changes are made a part of this Agreement.

10.2 **DISCLAIMER.** Provider will, in good faith, use the latest technology, search engine optimization processes, and general technical knowledge, but Provider makes no guarantee of specific search engine results, page ranks, or indexing.

10.3 **GOVERNING LAW.** This Agreement will be governed and construed in accordance with the laws of the State of Illinois. Both parties agree to submit to jurisdiction in Illinois and further agree that any cause of action arising under this Agreement may be brought in any court in the County of Will, State of Illinois. Client agrees to pay all attorney's fees, court costs and any other fees incurred by Provider in any collections claims or judgments entered against the Client.

10.4 **ELECTRONIC COMMERCE LAWS.** Client is solely responsible for complying with any laws, taxes, and tariffs applicable in any way to the Website or services provided.

10.5   **SEVERABILITY; WAIVER.** If any provision of this Agreement is held to be invalid or unenforceable for any reason by a Court of competent jurisdiction, 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.

10.6   **PERSONNEL AND 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, other than by the terms set forth herein. Personnel supplied by Provider work for Provider and shall not, for any purpose, be considered employees or agents of Client. Client will not, directly or indirectly, hire, solicit or encourage to leave, any personnel working with Client and Provider, in order to obtain the services of such Personnel to work directly for Client without Provider.

10.7   **TRANSFERABILITY.** The rights outlined herein are expressly reserved to the Parties to the Agreement and may not be transferred to anyone without the express written consent of both Parties to the Agreement. The rights may be transferred without prior written consent in the event of the sale of substantially all of the assets of either the Client or Provider's business.

IN WITNESS WHEREOF, each of the parties have executed this Agreement as of the dates written below.

<div align="center">

APPROVALS

</div>

PROVIDER APPROVAL

_____	_____
Print Name	Title
_____	_____
Signature	Date

CLIENT APPROVAL

_____	_____
Print Name	Title
_____	_____
Signature	Date

Company Name: