

Design & Marketing Terms & Conditions

These Terms and Conditions apply to both Web Design & Development and Online Marketing Services, either individually or together. Note: For Web Hosting, please see our [Hosting Terms of Service](#).

Definitions

As used herein and throughout this Agreement:

1. *Agreement* means the entire content of this BizzyWeb Services Contract, the Proposal document(s), together with any other Supplements designated below, together with any exhibits, schedules or attachments hereto.
2. *Client Content* means all materials, information, photography, writings, and other creative content provided by Client for use in the preparation of and/or incorporation in the Deliverables.
3. *Copyright* means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under U.S. Copyright Law.
4. *Deliverables* means the services and work product specified in the BizzyWeb Services Contract to be delivered by BizzyWeb to Client, in the form and media specified in the BizzyWeb Services Contract.
5. *Designer Tools* means all design tools developed and/or utilized by BizzyWeb in performing the Services, including without limitation pre-existing and newly developed software including source code, Web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational, and functional elements.
6. *Final Art* means all creative content developed or created by BizzyWeb, or commissioned by BizzyWeb, exclusively for the Project (Project may include websites, graphic design, landing pages, display ads, or as specified in the Project Summary) and incorporated into and delivered as part of the Final Deliverables, including and by way of example, not limitation, any and all visual designs, visual elements, graphic design, illustration, photography, animation, sounds, typographic treatments and text, modifications to Client Content, and BizzyWeb's selection, arrangement, and coordination of such elements together with Client Content and/or Third Party Materials.
7. *Final Deliverables* means the final versions of Deliverables provided by BizzyWeb and accepted by Client.
8. *Preliminary Works* means all artwork including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by BizzyWeb and which may or may not be shown or delivered to Client for consideration but do not form part of the Final Art. For example, sample images included in early drafts or renderings of a webpage, but that are not included in the final project delivered to the client, are considered Preliminary Works.
9. *Project* shall have the meaning given to it in the BizzyWeb Services Contract.
10. *Services* means all services and the work product to be provided to Client by BizzyWeb as described and otherwise further defined in the BizzyWeb Services Contract.
11. *Third Party Materials* means proprietary third party materials that are incorporated into the Final Deliverables, including without limitation stock photography or illustrations.
12. *Trademarks* means trade names, words, symbols, designs, or logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client. The term "Trademarks" shall include all marks eligible for protection as a trademark under state, federal or common law, whether the marks are registered or not.
13. *Social Media* shall mean all forms of social media such as Facebook, Google+, LinkedIn, Twitter, etc.
14. *Ads* shall mean online advertisements.
15. *PPC, CPC* shall mean Pay Per Click advertising.
16. *PPV, PPM, PPI, CPI, CPM* shall all mean Cost Per View advertising.

17. *Display Ads* shall mean advertisements promulgated by any display networks.
18. *SEO* shall mean Search Engine Optimization.
19. *Video Advertising* shall mean advertising on YouTube.com, Vimeo.com, or any similar public or private video website.
20. *Ad Budget* shall mean the advertising budget as set out in the BizzyWeb Services Contract.

Expiration

The terms of the BizzyWeb Services Contract shall be effective for 30 days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the BizzyWeb Services Contract, together with any related terms and conditions and deliverables, may be subject to amendment, change, or substitution.

Fees and Charges

1. *Fees.* In consideration of the Services to be performed by BizzyWeb, Client shall pay to BizzyWeb fees in the amounts and according to the payment structure set forth in the BizzyWeb Services Contract, and all applicable sales, use, or value added taxes, even if calculated or assessed subsequent to the payment structure.
2. *Additional Costs.* The Project pricing includes BizzyWeb's fee only. Additional Costs, including but not limited to any and all outside costs, photography and/or artwork licenses, plugin fees, or hosting fees, will be billed to Client unless specifically otherwise provided for in this BizzyWeb Services Contract.
3. *Invoices.* All invoices are payable Net 15, or as specified in the Services Contract. Client agrees to pay a monthly service charge of 1.5 percent on all overdue balances. Payments will be credited first to late payment charges and interest and next to the unpaid balance. Client shall be responsible for all collection fees or costs, including attorney fees, incurred in the enforcement of this Agreement. BizzyWeb reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding Additional Costs, taxes, expenses and Fees, charges, or the costs of Changes.
4. *Ad Budget.* During the course of Services, BizzyWeb undertakes to pay the Ad Budget amount agreed to in order to meet the direct costs of the advertising campaigns. The Ad Budget shall be paid by BizzyWeb and passed through to client as part of the agreed upon monthly fees for services.

Changes

1. *General Changes.* Unless otherwise provided in the BizzyWeb Services Contract, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at BizzyWeb's standard hourly rate at the time in effect. Such charges shall be in addition to all other amounts payable under the Proposal or the Services Contract, regardless of any maximum budget, contract price or final price identified therein. BizzyWeb may extend or modify any delivery schedule or deadlines in the BizzyWeb Services Contract and Deliverables as may be required by such Changes.
2. *Substantive Changes.* If Client requests or instructs Changes that amount to a revision in or near excess of 50% of the time required to produce the Deliverables, and or the value or scope of the Services, BizzyWeb shall be entitled to submit a new and separate BizzyWeb Services Contract to Client for written approval. Work shall not begin on the revised services until a fully signed revised BizzyWeb Services Contract and, if required, any additional retainer fees, are received by BizzyWeb.
3. BizzyWeb will prioritize performance of the Services as may be necessary or as identified in the Proposal, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the BizzyWeb Services Contract. Client agrees to review Deliverables within the time identified for such reviews and to promptly either, (a) approve the Deliverables in writing or (b) provide written comments and/or corrections sufficient to identify the Client's concerns,

objections, or corrections to BizzyWeb. BizzyWeb shall be entitled to request written clarification of any concern, objection, or correction. Client acknowledges and agrees that BizzyWeb's ability to meet any and all schedules is entirely dependent upon Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the BizzyWeb Services Contract; and any delays in Client's performance or Changes in the Services or Deliverables requested by Client may delay delivery of the project. Any such delay caused by Client shall not constitute a breach by BizzyWeb of any term, condition, or obligations under this Agreement.

4. *Testing, Review and Acceptance.* BizzyWeb will exercise commercially reasonable efforts to test Deliverables requiring testing and to make all necessary corrections prior to providing Deliverables to Client. Within five (5) business days of receipt of each Deliverable, Client shall notify BizzyWeb in writing of any failure of such Deliverable to comply with the specifications set forth in the BizzyWeb Services Contract, or of any other objections, corrections, changes, or amendments Client wishes made to such Deliverable. Any such written notice shall clearly identify any objection, correction, or change, or amendment desired by Client, and BizzyWeb will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes, or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice, or any response from Client at all, the Deliverable shall be deemed accepted.

Client Responsibilities

Client acknowledges that Client shall be responsible for performing the following in a reasonable and timely manner:

1. Communicating administrative or operational decisions to BizzyWeb promptly, as they affect the design or production of Deliverables, and coordinating approvals and meetings with parties other than BizzyWeb;
2. Providing Client Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the BizzyWeb Services Contract;
3. Providing final proofreading and written approval of all project documents. In the event that Client has approved Deliverables but errors, such as typographic errors or misspellings remain in the finished product, Client shall incur the cost of correcting such errors;
4. Responding to Content requests by BizzyWeb in a timely manner. In the event Client is unresponsive for a period of four (4) weeks, causing significant delays to the Project, BizzyWeb reserves the right to terminate the Project and this Agreement. In the event BizzyWeb terminates this Agreement under this section, Client may reinstate this Agreement by submitting a written request for reinstatement and paying a Reinstatement Fee of \$500. BizzyWeb may accept or deny Client's request for Reinstatement in BizzyWeb's sole discretion. If BizzyWeb denies the request for reinstatement, the Reinstatement Fee shall be returned to Client. In the event that so much time has passed since termination that BizzyWeb has changed its fee structure or its costs have increased, BizzyWeb reserves the right to ask Client to sign a new Services Contract. The terms outlined in the Termination Clause herein apply unless this Agreement is reinstated.

Accreditation/Promotions

All displays or publication of the Deliverables shall bear accreditation and/or copyright notice in BizzyWeb's name in the form, size, and location as incorporated by BizzyWeb in the Deliverables, or as otherwise directed by BizzyWeb. Client agrees BizzyWeb shall retain the right to reproduce, publish, and display the Deliverables in BizzyWeb's portfolios and websites and other media for the purposes of marketing, promotion, recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Client acknowledges that no further compensation by BizzyWeb for these uses of the Deliverables is required. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project and, if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to in writing, include a link to the other party's website.

Confidential Information

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works. As used in this Agreement, "Confidential Information" shall mean each party's product information, pricing of products, research, development, marketing, business systems, ideas, techniques, trade secrets, financial information concerning the business and customers of each party, information concerning a party's pricing strategies, income, salaries, expenses, and accounts receivable, information relating to each party's clients and potential clients; supplier information, purchasing techniques, advertising strategies, business policies, business plans, and any other information that a party considers proprietary or confidential, whether labeled by that party as "confidential" or not. Each party and its agents and employees shall hold and maintain in strict confidence all Confidential Information, and shall not use any Confidential Information except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

Relationship of the Parties

1. *Independent Contractor.* BizzyWeb is a contractor, not an employee of Client or any company affiliated with Client. BizzyWeb shall provide the Services under the general direction of Client, but BizzyWeb shall determine, in BizzyWeb's sole discretion, the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. BizzyWeb and the work product or Deliverables prepared by BizzyWeb shall not be deemed a work for hire as that term is defined under Copyright Law. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.
2. *BizzyWeb Agents.* BizzyWeb shall be permitted to engage and/or use third party contractors or other service providers as independent contractors in connection with the Services ("BizzyWeb Agents"). BizzyWeb shall have the sole authority to select and engage such third party contractors or other services providers, and shall engage such third parties on terms negotiated in BizzyWeb's sole discretion.
3. *No Solicitation.* During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire, or any other kind of basis, any designer, employee, or BizzyWeb Agent of BizzyWeb, whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation, or work-for-hire event occurs, Client agrees that BizzyWeb shall be entitled to damages calculated as either: (a) 25 percent of said person's starting salary with Client, or (b) 25 percent of fees paid to said person if engaged by Client as an independent contractor. In the event of (a) above, payment shall be paid to BizzyWeb within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any month in which the independent contractor performed services for Client. BizzyWeb, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity.
4. *No Exclusivity.* The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by BizzyWeb, and BizzyWeb shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by BizzyWeb.

Warranties and Representation

1. *By Client.* Client represents, warrants, and covenants to BizzyWeb that (a) Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of Client Content, (b) to the best of Client's knowledge, the Client Content does not infringe the rights of any third party, and use of the Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties, (c) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and (d) Client shall comply with all laws and regulations as they relate to the Services and Deliverables.

2. *By BizzyWeb.* BizzyWeb hereby represents, warrants, and covenants to Client that BizzyWeb will provide the Services identified in the Agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services. BizzyWeb further represents, warrants, and covenants to Client that (i) except for Third Party Materials and Client Content, the Final Deliverables shall be the original work of BizzyWeb and/or its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by BizzyWeb, BizzyWeb shall have received from such contractors all necessary rights, title, and interest in and to the Final Deliverables sufficient for BizzyWeb to grant the intellectual property rights provided in this Agreement, and (iii) to the best of BizzyWeb's knowledge, the Final Art provided by BizzyWeb and BizzyWeb's subcontractors does not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties. In the event Client or third parties modify or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Project Brief or this Agreement or contrary to the terms and conditions noted herein, all representations and warranties of BizzyWeb shall be void. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS AGREEMENT, BIZZYWEB MAKES NO WARRANTIES WHATSOEVER. BIZZYWEB EXPLICITLY DISCLAIMS ANY OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR COMPLIANCE WITH LAWS OR GOVERNMENT RULES OR REGULATIONS APPLICABLE TO THE PROJECT.
3. Subject to the representations and warranties of Client in connection with Client Content, BizzyWeb represents and warrants that the Final Deliverables will be free from Deficiencies. For the purposes of this Agreement, "Deficiency" shall mean a failure to comply with the specifications set forth in the Proposal in any material respect, but shall not include any problems caused by Client Content, modifications, alterations or changes made to Final Deliverables by Client or any third party after delivery by BizzyWeb, or the interaction of Final Deliverables with third party applications such as Web browsers other than those specified in the Proposal. The parties acknowledge that Client's sole remedy and BizzyWeb's sole liability for a breach of this Section is the obligation of BizzyWeb to correct any Deficiency identified within the Warranty Period. In the event that a Deficiency is caused by Third Party Materials provided or specified by BizzyWeb, BizzyWeb's sole obligation shall be to substitute alternative Third Party Materials.
4. *Designer Tools.* Subject to the representations and warranties of the Client in connection with the materials supplied by Client, BizzyWeb represents and warrants that, to the best of BizzyWeb's knowledge, the Designer Tools do not knowingly infringe the rights of any third party, and use of same in connection with the Project will not knowingly violate the rights of any third parties except to the extent that such violations are caused by Client Content, or the modification of, or use of the Deliverables in combination with materials or equipment outside the scope of the applicable specifications, by Client or third parties.

Rights to Deliverables Other Than Final Art

Client acknowledges that BizzyWeb's Services and development of the Deliverables will involve the creation of content by both Client and BizzyWeb. The rights and ownership of such content shall be as follows:

1. *Client Content.* Client Content, including all of Client's pre-existing Trademarks, shall remain the sole property of Client or its respective suppliers, and Client or its suppliers shall be the sole owner of all rights in connection therewith. Client hereby grants to BizzyWeb a nonexclusive, nontransferable license to use, reproduce, modify, display, and publish the Client Content solely in connection with BizzyWeb's performance of the Services and limited promotional uses of the Deliverables as authorized in this Agreement.
2. *Third Party Materials.* All Third Party Materials are the exclusive property of their respective owners. BizzyWeb shall inform Client of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Final Art. Under such circumstances BizzyWeb shall inform Client of any need to license, at Client's expense, and unless otherwise provided for by Client, Client shall obtain the license(s) necessary to permit Client's use of the Third Party Materials consistent with the usage rights granted herein. In the event Client fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of Third Party Materials, Client hereby indemnifies, saves and holds harmless BizzyWeb from any and all

- damages, liabilities, costs, losses, or expenses arising out of any claim, demand, or action by a third party arising out of Client's failure to obtain copyright, trademark, publicity, privacy, defamation, or other releases or permissions with respect to materials included in the Final Art.
3. *Preliminary Works.* BizzyWeb retains all rights in and to all Preliminary Works and all Preliminary Works shall remain the exclusive property of BizzyWeb. Please refer to the Definitions on page one for what is included in Preliminary Works.
 4. Upon completion of the Services and expressly conditioned upon full payment of all fees, costs, and out-of-pocket expenses due, BizzyWeb assigns to Client all ownership rights, including any copyrights, in and to any artworks or designs comprising the works created by BizzyWeb for use by Client as a Trademark. BizzyWeb shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment. Client shall have sole responsibility for ensuring that any proposed trademarks or Final Deliverables intended to be a Trademark are available for use in commerce and federal registration and do not otherwise infringe the rights of any third party. Client hereby indemnifies, saves and holds harmless BizzyWeb from any and all damages, liabilities, costs, losses, or expenses arising out of any claim, demand, or action by any third party alleging any infringement arising out of Client's use and/or failure to obtain rights to use or use of the Trademark.
 5. *BizzyWeb Tools.* All BizzyWeb Tools are and shall remain the exclusive property of BizzyWeb. BizzyWeb hereby grants to Client a nonexclusive, non-transferable (other than the right to sublicense such uses to Client's web hosting or internet service providers), perpetual, worldwide license to use the BizzyWeb Tools solely to the extent necessary with the Final Deliverables for the Project. Client may not directly or indirectly, in any form or manner, decompile, reverse engineer, create derivative works, or otherwise disassemble or modify any BizzyWeb Tools comprising any software or technology of BizzyWeb.

Rights to Final Art

Upon completion of Services, and expressly subject to full payment of all fees, costs, and expenses due, BizzyWeb hereby assigns to Client all right, title and interest, including without limitation copyright and other intellectual property rights, in and to the Final Art, except for BizzyWeb Tools. BizzyWeb agrees to reasonably cooperate with Client and shall execute any additional documents reasonably necessary to evidence such assignment.

Support Services

1. *Warranty Period.* "Support Services" means commercially reasonable technical support and assistance to maintain and update the Deliverables, including correcting any errors or Deficiencies, but shall not include the development of enhancements or changes to the Project or other services outside the scope of the Proposal. During the first five (5) business days after the Project Launch and the expiration of this Agreement ("Warranty Period"), BizzyWeb shall provide up to three (3) hours of Support Services at no additional cost to Client. Additional time shall be billed at BizzyWeb's regular hourly support rate, then in effect upon the date of the request for additional support.
2. *Maintenance Period.* Upon expiration of the Warranty Period and dependent upon Client being hosted with BizzyWeb, BizzyWeb will provide Support Services for the following twelve (12) months (the "Maintenance Period") BizzyWeb shall provide up to the contracted hourly limit of Support Services allowances at no additional cost to Client. All additional time shall be billed at BizzyWeb's regular hourly support rate, then in effect upon the date of the request for additional support. The Maintenance Period will be automatically extended every twelve (12) months for a one-year period, unless cancelled in writing by Client. Support allowances are subject to change at any time and Client will be notified in advance of any changes.

Enhancements

During the Maintenance Period, Client may request that BizzyWeb develop enhancements to the Deliverables, and BizzyWeb shall exercise commercially reasonable efforts to prioritize BizzyWeb's resources to create such enhancements. The parties understand that BizzyWeb's preexisting obligations to third parties existing on the date of the request for enhancements may delay the immediate execution of

any such requested enhancements. Such enhancements shall be provided on a time and materials basis at BizzyWeb's price then in effect for such services.

Online Marketing Services

BizzyWeb will provide Client with certain Online Marketing Services including, but not limited to, one or more of the following depending on which Online Marketing Services are selected by Client within the Services Contract, if any.

1. Social Media
2. Online Ads
3. Pay Per Click Ads (PPC, CPC)
4. Cost Per View Ads (PPV, PPM, PPI, CPI, CPM)
5. Display Ads
6. SEO
7. Video Advertising

Client authorizes BizzyWeb to use client pictures, logos, trademarks, web site images, pamphlets, content, or other items as requested by BizzyWeb, for any use as deemed necessary by BizzyWeb for Online Marketing purposes.

Advertising

1. *Provision of Information.* In order to enable BizzyWeb to create and promulgate appropriate advertisements Client agrees to provide BizzyWeb with:
 1. An executive summary of Client and its area of operation.
 2. A detailed description of the product or services being advertised including information relevant to advertising, such as cost, payment means, refund policy, etc.
 3. An indication of the intended purpose of advertising (whether to promote a given product or service or raise brand awareness or product awareness or both).
 4. A detailed budget for advertising.
 5. Access to Client's traffic statistics to allow BizzyWeb to tailor and improve the advertising as well as tracking commission, if applicable.

The performance by BizzyWeb of its obligations under the Services Contract is conditional upon receipt of the above and changes in these requirements must be notified in writing as soon as practical.

1. *Obligations of BizzyWeb.* It is agreed that:
 1. BizzyWeb may use the following means to promote the products or services of Client as agreed between the Parties from time to time:
 1. SEO
 2. Text Ads
 3. Image Ads
 4. PPC Ads
 5. PPV Ads
 6. Social Media Advertising
 7. Advertisements on Websites (to be specified in writing within the project)
 8. Video Advertising
 1. BizzyWeb shall not promote any advert without that advert being first approved by the Company.
 2. BizzyWeb agrees that it will surrender to Client the following items on the termination of the Services Contract:
 1. A full list of keywords used in connection with the advertisement or SEO.
 2. All advertising copy and creative.
 3. Full details of the PPC or PPV strategy including targeted territories, budgets, and any other demographics.
 4. Full details of all traffic received or directed under the campaign, including Google Analytics information or similar.

- *Warranties and Indemnities.* It is agreed that:
 1. BizzyWeb warrants that BizzyWeb will use only those means of advertising approved by Client and BizzyWeb undertakes not to use any other means of advertising without the prior written approval of Client.
 2. Where BizzyWeb is holding or otherwise controlling an Ad Budget, BizzyWeb undertakes to use this budget in its entirety for advertising and not for any other purpose.
 3. BizzyWeb undertakes to pause or stop all advertising on the express written instruction of Client in writing.
 4. Client undertakes to pay all fees promptly and not to unreasonably withhold payment.
 5. BizzyWeb warrants that BizzyWeb will use only material expressly authorized by Client and will use only entirely original material and will not infringe the copyright of any third party.

Indemnification/Liability

1. *By Client.* Client agrees to indemnify, save and hold harmless BizzyWeb and its owners, employees, designers, and independent contractors, from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of: (a) any breach of Client's responsibilities or obligations, representations, or warranties under this Agreement; (b) any claims of infringement of Client's trademarks, copyrights, or other intellectual property; and (c) Client's misuse of or modifications to the Final Deliverables, Original Art or BizzyWeb Tools. Under such circumstances BizzyWeb shall promptly notify Client in writing of any claim or suit. Client shall have sole control of the defense and all related settlement negotiations; BizzyWeb may provide Client with commercially reasonable assistance, information, and authority necessary to perform Client's obligations under this section. Client will reimburse the reasonable out-of-pocket expenses incurred by BizzyWeb in providing such assistance.
2. *By BizzyWeb.* Subject to the terms, conditions, express representations and warranties provided in this Agreement, BizzyWeb agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses, or expenses arising out of any finding of fact which is inconsistent with BizzyWeb's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses, or expenses arise directly as a result of negligence or misconduct of Client provided that (a) Client promptly notifies BizzyWeb in writing of the claim; (b) BizzyWeb shall have sole control of the defense and all related settlement negotiations; and (c) Client shall provide BizzyWeb with the assistance, information, and authority necessary to perform BizzyWeb's obligations under this section. Notwithstanding the foregoing, BizzyWeb shall have no obligation to defend or otherwise indemnify Client for any claim or adverse finding of fact arising out of or due to Client Content, any unauthorized content, improper or illegal use of any Deliverables, or the failure to update or maintain any Deliverables provided by BizzyWeb.
3. *In Relation to Advertising.* BizzyWeb warrants that BizzyWeb will use only those means of advertising approved by Client and BizzyWeb undertakes not to use any other means of advertising without the prior written approval of Client. Where BizzyWeb is holding or otherwise controlling an Ad Budget, BizzyWeb undertakes to use this budget in its entirety for advertising and not for any other purpose. BizzyWeb undertakes to pause or stop all advertising on the express written instruction of Client in writing. Client undertakes to pay all fees promptly and not to unreasonably withhold payment. BizzyWeb warrants that BizzyWeb will use only material expressly authorized by Client and will use only entirely original material and will not infringe the copyright of any third party. BizzyWeb warrants that BizzyWeb will not use any false or misleading statements in their advertisements whether by statement, act, omission or implication. BizzyWeb warrants that BizzyWeb will not use any vulgar, offensive or disreputable means of advertising. The obligations and benefits under the Services Contract may be assigned by either Party provided that the other Party first agrees in writing of said assignment. The failure or delay by either Party to enforce any term of this Services Contract or to act upon a breach of any term shall not constitute a waiver of their rights. Both Parties warrant that they will not do anything to hinder or adversely affect the execution of the other Parties' duties under this Services Contract.
4. *Limitation of Liability.* THE SERVICES AND THE WORK PRODUCT OF BIZZYWEB ARE SOLD "AS IS." IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF BIZZYWEB, ITS DIRECTORS, OFFICERS, EMPLOYEES, DESIGN AGENTS AND AFFILIATES ("DESIGN PARTIES"), TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR

OTHERWISE, SHALL BE LIMITED TO REFUND OF THE NET PROFIT OF BIZZYWEB FROM SERVICES PROVIDED TO CLIENT. IN NO EVENT SHALL BIZZYWEB BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MATERIALS OR THE SERVICES PROVIDED BY BIZZYWEB, EVEN IF BIZZYWEB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Compliance with Laws

Client, upon acceptance of the Deliverables, shall be responsible for conformance with all laws relating to software and technology.

Term and Termination

1. This Agreement shall commence on the Effective Date and shall remain effective until the Services are completed and delivered or terminated earlier in accordance with the terms of this Agreement.
2. This Agreement may be terminated at any time by either party effective immediately upon giving written notice to the other party.
3. This Agreement may also be terminated by the mutual agreement of the parties.
4. This Agreement may be terminated in writing for cause if any party:
 1. Becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or
 2. Breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within fifteen (15) business days from receipt of written notice of such breach.
5. In the event of termination, BizzyWeb shall be compensated for the Services performed through the date of termination in the amount of the greatest of: (a) any advance payment, (b) a prorated portion of the fees due, and at a minimum (c) hourly fees for work performed by BizzyWeb or BizzyWeb's agents, plus all expenses, Additional Costs, and out of pocket costs incurred by BizzyWeb through the date of termination. BizzyWeb will not refund any fees for work performed up to the date of cancellation.
6. In the event of termination by Client and upon full payment of compensation as provided herein, BizzyWeb grants to Client such right and title as provided for in this Agreement with respect to those Deliverables provided to, and accepted by Client as of the date of termination.
7. Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

General

1. *Modification/Waiver.* This Agreement may be modified by the parties. Any modification of this Agreement must be in writing, except that BizzyWeb's invoices may include, and Client shall pay, expenses or costs that Client authorizes by electronic mail in cases of extreme time sensitivity. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.
2. All notices to be given hereunder shall be transmitted in writing either by facsimile, electronic mail, or a message within BizzyWeb's Project Management System ("PMS") with return confirmation of receipt of by certified or registered mail, return receipt requested, and shall be sent to the addresses identified below, unless notification of change of address is given in writing. Notice shall be effective upon receipt or in the case of fax, e-mail, or PMS message, upon confirmation of receipt.
3. *No Assignment.* Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned, or encumbered by operation of law or otherwise, without the prior written consent of either party.

4. *Force Majeure.* BizzyWeb shall not be deemed in breach of this Agreement if BizzyWeb is unable to complete the Services or any portion thereof by reason of fire, earthquake, labor dispute, act of God, or public enemy, death, illness, or incapacity of BizzyWeb, or any local, state, federal, national, or international law, governmental order or regulation, or any other event beyond BizzyWeb's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, BizzyWeb shall give notice to Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of Services.
5. *Governing Law and Dispute Resolution.* The formation, construction, performance, and enforcement of this Agreement shall be in accordance with the laws of the United States and the state of Minnesota. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, either party may commence mediation and/or binding arbitration through the American Arbitration Association. The prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its attorneys' fees and costs. In all other circumstances, the parties specifically consent to the local, state, and federal courts located in the state of Minnesota. The parties hereby waive any jurisdictional or venue defenses available to them and further consent to service of process by mail. Client acknowledges that BizzyWeb will have no adequate remedy at the law in the event Client uses the deliverables in any way not permitted hereunder, and hereby agrees that BizzyWeb shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.
6. *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.
7. *Headings.* The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent, or interpretation of the provisions of this Agreement, nor shall such headings otherwise be given any legal effect.
8. *Incorporation by Reference.* The BizzyWeb Services Contract, the Proposal documents, and any Supplemental documents supporting the Services Contract or the Proposal are hereby incorporated by reference.
9. *Integration.* This Agreement comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings, and discussions between the parties relating to the subject matter of this Agreement. In the event of a conflict between the Proposal and any other Agreement documents, the terms of the Proposal shall control. This Agreement comprises this Basic Terms and Conditions document and the Proposal.