Web Site Design Policy and SLA. Ver 2.2 2010

Web Site Design Terms and Conditions Policy.

Note. This is an example of our general SLA or web site design agreement and would be modified to mutually suit the clients application or situation. However, if no SLA or agreement is in force, this general agreement covers the propriety ownership of all site code developed. The Developer legally owns all code developed unless otherwise stated.

This Agreement is made online between the agreed client and Sumphero.com. Sumphero.com at the address, of the ("Developer") and the online agreed, ("Client"), and collectively referred to as the "Parties." Contract confirmation is or has been made with the associated email.

WITNESSETH

Whereas, Developer is in the business of offering Internet services relating to development of sites on the World Wide Web portion of the Internet, and is willing to provide services to Client on the terms and subject to the conditions set forth below; and: Whereas Client desires to engage Developer, and Developer desires to be engaged by Client, to provide Internet services on the terms and subject to the conditions set forth below. Now, therefore, the Parties hereby agree as follows.

1. Developer Services

Developer agrees to provide Client with services for development of a Web site on the World Wide Web portion of the Internet (the "Web Site") as set forth or described in Exhibit B hereto (the "Web Site Specifications") and to provide Client with additional services, if any, set forth or described in Schedule 3 hereto and mutually agreed upon in writing by the Parties (the "Additional Services'). The obligations of Developer, if any, to provide ongoing maintenance tasks for the Web Site shall be set forth and included as part of Additional Services on Schedule 4 hereto ("Maintenance").The Web Site Services and the Additional Services are hereinafter referred to collectively as the "Services". Client agrees that Developer is responsible only for providing the Services, and Developer is not responsible for providing any services or performing any tasks not specifically set forth in Exhibit B or Schedule 3 hereto.

2. Web Site Development and Transfer

2.1 Specifications and Client Content

Developer, in consultation with Client, shall prepare detailed written specifications for the Web Site (the "Specifications"). The Specifications shall consist of, among other things, a design for the Web Site, a flow-chart of the pages for the Web Site, programming and interactive feature requirements, and the placement of any content or other materials which are to be incorporated into the Web Site. The Specifications shall be subject to any restrictions or limitations set forth in Exhibit B or Schedule 3. The Specifications which have been mutually agreed upon by the Parties in writing shall be attached hereto as Exhibit B and 3. If the Parties are unable to agree in writing to mutually acceptable Specifications, after using good faith efforts, on or before days after the Commencement Date, either party may terminate this Agreement by providing written notice to the other party. Such termination shall not relieve Client from the obligation of paying Developer for all fees due and owing Developer as of the date of such termination.

2.2 Delivery of Client Content

"Client Content" shall mean any materials provided by Client for incorporation in the Web Site, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text. Client shall deliver the Client Content to Developer in an electronic file format specified and accessible by Developer (eg, txt, gif) or as otherwise specified in the Specifications. Any services required to convert or input Client Content not set forth in the Specifications shall be charged as Additional Services. Client shall promptly deliver all Client Content to Developer as required by Developer.

2.3 Initial Version

Upon completion of mutually agreeable Specifications, and upon Developer's receipt of the Client Content and any fees called for in Exhibit A hereto, Developer shall commence tasks associated with the development of the initial version of the Web Site ("Initial Version") and notify the Client of the URL (Uniform Resource Locator) or other address of the Initial Version. Developer shall use combinations of technology as Developer, in consultation with the Client, deems appropriate to develop the Web Site.

2.4 Revisions

Client shall have 14 working days, or such time as otherwise agreed by the Parties in writing, from the date of a written notice of completion of the Initial Version from Developer to review and request in writing from Developer revisions to the Initial Version. Upon receipt of such requests, Developer shall use commercially reasonable efforts to implement such revision requests that are within the scope of, and consistent with, the Specifications. If Client wishes to implement any revisions to the Web Site that deviate in any material respect from the Specifications, Client shall submit to Developer a written change order containing (i) such revisions in detail and (ii) a request for a price quote for each change (collectively, the "Change Order). Developer shall promptly evaluate the Change Order and submit to Client for its written acceptance a proposal for undertaking the applicable tasks and a price quote reflecting all associated fees associated with Client's Change Order. Client shall have 14 business days from receipt of such proposal to accept or reject Developer's proposal in writing. If Client accepts Developer's proposal to undertake the work necessitated by the Change Order, then the Change Order, as supplemented and/or modified by Developer's proposal, shall amend and become a part of the Specifications in Exhibit B and Schedule 3 as appropriate and Exhibit A hereto (Fee and Payment Schedule), and Developer shall proceed to implement such revisions in accordance with the Specifications and Exhibit B and Schedule 3 as so modified. If (i) Client has not made any requests for revisions by the end of 14 days from the date of written notice of completion of the Initial Version from Developer, or by such time as otherwise agreed by the Parties in writing, or (ii) upon completion of implementation of such requests which were mutually agreed upon by the Parties under the revised Specifications, the Web Site shall be deemed accepted by Client ("Acceptance").

2.5 Transfer

Upon Acceptance of the Web Site and payment of all fees called for in Exhibit A hereto, Developer shall transfer the Web Site to the computer system owned and operated by Client and/or its designated third party contractor, identified on Exhibit B hereto, through which the Web Site may be accessed via the World Wide Web portion of the Internet (the "Host Server).

2.6 Work Order Forms

Subsequent to the execution of this Agreement by the Parties, in the event Developer and Client agree that Developer is to perform additional tasks not in the original scope of Services hereunder, then the Parties shall execute a work order form (each an "Order Form) in the form attached hereto as Schedule 5, upon which each such Schedule 5 shall be incorporated into and shall become a part of this Agreement and shall be subject to the terms and conditions hereof.

3. Proprietary Rights

3.1 Proprietary Rights of Client

As between Client and Developer, Client Content shall remain the sole and exclusive property of Client, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights. Nothing in this Agreement shall be construed to grant Developer any ownership right in, or license to, the Client Content, except as provided in Section 3.2 of this Agreement.

3.2 Proprietary Rights of Developer

Subject to Client's ownership interest in Client Content, all materials, including, but not limited, to any computer software (in object code and source code form), script, programming code, data, information or HTML/XHTML/XML or any script developed or provided by Developer or its suppliers under this Agreement (with the exception of original elements of audio visual displays created hereunder specifically for Client, which shall be deemed to be part of Client Content), and any trade secrets, know-how, methodologies and processes related to Developer's products or services, shall remain the sole and exclusive property of Developer or its suppliers, including, without limitation, all copyrights, trademarks, patents, database rights, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto (collectively "Developer Materials'). To the extent, if any, that ownership of the Developer materials does not automatically vest in Developer by virtue of this Agreement or otherwise, Client hereby transfers and assigns to Developer all rights, title and interest which Client may have in and to the Developer Materials. Client acknowledges and agrees that Developer is in the business of designing and hosting Web sites, and that Developer shall have the right to provide to third parties services which are the same or similar to the Services, and to use or otherwise exploit any Developer Materials in providing such services. The Develop has sole rights to host and develop this site and remains the sole Webmaster for at least the period of two years from the initial contract date.

3.3 Confidentiality

Each party agrees that during the course of this Agreement, information that is confidential or proprietary may be disclosed to the other party, including, but not limited to software, technical processes and formulas, source codes, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, and marketing data ("Confidential Information").

Confidential Information shall not include information that the receiving party can demonstrate (a) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party, (b) was known to the receiving party as of the time of its disclosure, (C) is independently developed by the receiving party, or (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party.

Except as provided for in this Agreement, each party shall not make any disclosure of the Confidential Information to anyone other than its employees who have a need to know in connection with this Agreement. Each party shall notify its employees of their confidentiality obligations with respect to the Confidential Information and shall require its employees to comply with these obligations. The confidentiality obligations of each party and its employees shall survive the expiration or termination of this Agreement.

3.4 Developer Notices

Unless otherwise agreed to in writing by the Parties, Developer shall have the right to place proprietary notices of Developer and its suppliers (including hypertext links related thereto) on the Developer Materials and on the Web Site, including developer attribution and hypertext links to Developers web sites, and to change or update such notices from time to time upon notice to Client. In no event may client remove or alter any Developer proprietary notice from the Developer Materials or the Web Site without Developers prior written consent.

3.5 Developer Copyright

Unless otherwise agreed to in writing by the Parties, the Developer retains the Copyright for the developed web site. Any variation to this agreement needs to be agreed in advanced in writing before the web site is developed.

4. License

4.1 Grant of License - Client

Client hereby grants to Developer a non-exclusive, world wide, royalty-free license to edit, modify, adapt, translate, Schedule, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Client Content as necessary to render the Services to Client under this Agreement.

4.2 Grant of License - Developer

Developer hereby grants to Client a limited, non-exclusive, non-transferable license solely to make use of Developer Materials which are incorporated in the Web Site and which are required for the operation of the Web Site solely to operate the Web Site on the Host Server. Developer hereby reserves for itself all rights in and to the Developer Materials not expressly granted to Client in the immediately foregoing sentence. In no event shall Client use any trademarks or service marks of Developer without Developer's prior written consent. Unless otherwise agreed to in writing by Developer, the transfer or attempted transfer of the Web Site to any host server other than the Host Server shall automatically terminate the foregoing license.

5. Client Content

5.1 Accuracy and Review of Client Content

Client assumes sole responsibility for: (a) acquiring any authorization(s) necessary for hypertext links to third party Web sites; and (b) the accuracy of materials provided to Developer, including, without limitation, Client Content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted; and (c) ensuring that the Client Content does not infringe or violate any right of any third party, including without limitation, intellectual property rights and without violating any law.

5.2 Limitations on Client Content

Client shall provide Client Content that does not contain any content or materials which are obscene, threatening, malicious, which infringe on or violate any applicable law or regulation or any proprietary, contract, moral, privacy or other third party right, or which otherwise expose Developer to civil or criminal liability. Any such materials provided by Client to Developer which do not satisfy the foregoing requirements in this Section 5.2 shall be deemed to be a material breach of this Agreement.

6. Fees and Taxes

6.1 Web Site Services Fees

In consideration for that portion of the Services to be rendered by Developer in connection with developing and finalizing the Specifications, Client shall pay to Developer, upon execution of this Agreement, the fees identified in Exhibit A hereto under the heading "Specification Fees" (the "Specification Fees') unless otherwise agreed and set out in Exhibit A. Upon Acceptance of the Specifications by Client, Developer and Client shall negotiate in good faith to agree on fees to be paid by Client for the balance of the Services. Such agreed-upon fees and associated payment schedules shall then be inserted on Exhibit a hereto under the heading "Non-Specification Fees" (the "Non-Specification Fees'), and initialled and dated by authorised representatives of each of the Parties. Client shall pay the Non-Specification Fees in accordance with the applicable payment schedule set forth in Exhibit A hereto, provided that Developer expressly reserves the right to change the rates charged hereunder for the Services during any renewal Term. In the-event Developer and Client are unable to agree on Non-Specification Fees following completion of the Specifications and after negotiating in good faith, either Party may terminate this Agreement upon days prior written notice to the other Party.

6.2 Web Masters Maintenance Fees

As part of the standard Web Masters agreement, the client agrees to pay Sumphero.com, the Developer, an annual Web Masters Fee. Unless otherwise agreed, this fee is $120 (AUD)/year. As agreed, the Developer will then maintain the clients web site content, such as, the online copyright notification, privacy policy and email, (mail box) set-up on a monthly basis. Thereafter, further changes in content or HTML tags would constitute additional development and therefore would incur additional costs to the client under the agreed schedule.

6.3 Other Maintenance Fees

To the extent that Developer is to provide additional Maintenance under Schedule 4 hereto, Client shall pay for all maintenance-related tasks on a time and materials basis, as invoiced by Developer, unless otherwise expressly provided on Exhibit A hereto for a period of at least two years from the initial contract date. Web starter Entry package.

6.4 Out-of-Pocket Expenses

Client shall pay, or promptly reimburse Developer for, any out-of-pocket expenses, including, without limitation, travel and travel-related expenses, incurred by Developer in connection with the performance of the Services.

6.5 Additional Services Fees

Unless otherwise agreed by the Parties in writing on Schedule 3 hereto, Client shall pay to Developer all fees for additional Services on a time and materials basis as invoiced by Developer.

6.6 Late Payment

Client shall pay to Developer all fees not specifically itemised on Exhibit A within 30 days of the date of the applicable Developer invoice. If Client fails to pay any fees within 7-10 days from the date due according to Exhibit A, or within 30 days from the date of an invoice, where applicable, then (without prejudice to the Developer's other rights and remedies) the Developer reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 2 per cent above the base rate of Royal Bank of Scotland plc (or such other London Clearing Bank as the Developer may nominate) from time to time in force compounded quarterly. Such interest shall be paid on demand by the Developer. In addition, failure of Client to fully pay any fees within 30 days after the applicable due date shall be deemed a material breach of this Agreement justifying suspension of the performance of the Services by Developer, and will be sufficient cause for immediate termination of this Agreement by Developer. The Developer may withdraw the Web Site from the World Wide Web (if hosted by or on behalf of the Developer) forthwith in this event. Any such suspension does not relieve Client from paying past-due fees plus interest. Client shall be liable for any costs associated with such fee recovery, including, but not limited to, legal costs, court costs, and collection agency fees.

6.7 Taxes

Client shall pay or reimburse Developer for all sales, use, transfer, privilege, excise, value added tax and all other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the performance by Developer under this Agreement; excluding, however, income taxes on profits which may be levied against Developer.

7. Warranties

7.1 Developer Warranties

Developer represents and warrants that (a) Developer has the power and authority to enter into and perform its obligations under this Agreement, and (b) Developer's Services under this Agreement shall be performed with reasonable skill and care. Developer further warrants to Client that, to the best of Developer's knowledge, the Developer Materials do not and will not infringe, or be misappropriations of, the property rights of third parties, provided, however, that Developer shall not be deemed to have breached such warranty to the extent that Client or its agent(s) have modified the Web Site in any manner or if the Web Site incorporates unauthorised third-party materials, through framing or otherwise. (c) the Web Site will conform to the Specifications. If the Web Site does not conform to the Specifications, Developers shall be responsible to correct the Web Site without unreasonable delay, at Developers sole expense and without charge to Client, to bring the Web Site into conformance with the specifications. Client waives any other warranty, express or implied. Client acknowledges that Developers do not warrant that the Web Site will work on all platforms. Client acknowledges that Developers are not responsible for the results obtained by the Client on the Web Site.

7.2 Client Warranties

Client represents and warrants that (a) Client has the power and au-thority to enter into and perform its obligations under this Agreement, (b) Client Content does not and shall not contain any content materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of a third party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, and that Client owns the Client Content or otherwise has the right to place the Client Content on the Web Site, and (c) Client has obtained any authorization(s) necessary for hypertext links from the Web Site to other third party Web sites.

7.3 Disclaimer of Warranty

Except for the limited warranties set forth in Section 7. 1, developer makes no warranties hereunder and developer expressly disclaims all other warranties, express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose.

8. Indemnification

8.1 Client

Client agrees to indemnify, defend, and hold harmless Developer, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable legal fees, to the extent that such action is based upon a claim that: (i) if true, would constitute a breach of any of Client's representations, warranties, or agreements hereunder; (ii) arises out of the negligence or wilful misconduct of Client; or (iii) any of the Client Content to be provided by Client hereunder or other material on the Web Site infringes or violates any rights of third parties, including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, database rights, trade secrets and/or licenses.

8.2 Notice

In claiming any indemnification hereunder, the Developer shall promptly provide the Client with written notice of any claim which the Developer believes falls within the scope of the foregoing paragraph. Client may, at its own expense, assist in the defence if it so chooses, provided that the Developer shall control such defence and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the Developer shall not be final without the Developer's written consent, which shall not be unreasonably withheld.

9. Limitation of Liability

(1) The Developer shall indemnify the Client and keep the Client fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Developer, its employees, agents or sub-contractors or by any defect in the design or workmanship or supply of the Web Site Services.

(2) The Client shall indemnify the Developer and keep the Developer fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors.

(3) Except in respect of injury to or death of any person (for which no limit applies) the respective liability of the Developer and the Client under sub-clauses (1) and (2) in respect of each event or series of connected events shall not exceed the total value of fees payable pursuant to Exhibit A for the services to be supplied if the contract was performed in full.

(4) Notwithstanding anything else contained in this Agreement the Developer shall not be liable to the Client for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

(5) The Developer shall not be liable to the Client for any loss arising out of any failure by the Client to keep full and up-to-date security copies of the Web Site computer programs and data it uses in accordance with best computing practice. Neither will the Developer be liable for any delay in delivery of the Web Site to the Host Server howsoever such delay may be caused.

10. Termination

10.1 Term

This Agreement shall be commenced when signed by the Parties and thereafter shall remain in Effect until the Developer delivers to the Client an operational Web site in accordance with the Specifications in and milestones (if any) set out in Exhibit B. Client acknowledges, however, that any delivery deadline, and the other payment milestones listed in Exhibit B, are estimates, and are not required delivery dates. In relation to these dates time shall not be of the essence and the Client must make required payments as per Exhibit B in any event. The Developer has sole rights to host and develop this site and remains the sole Webmaster for at least the period of two years from the initial contract date. This relationship is then automatically renewed as the hosting contract continues and the domain name is reregistered.

10.2 Termination

(1) This Agreement may be terminated forthwith by either party on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business, or in the case of an individual shall be adjudicated bankrupt.

(2) Any termination under sub-clause (1) shall discharge the parties from any liability for further performance of this agreement and in the case of a termination by the Developer shall entitle the Developer to enter any of the Client's premises and recover any equipment and materials the property of the Developer (and so that the Client hereby irrevocably licenses the Developer, its employees and agents to enter any such premises for that purpose) and also to be paid a reasonable sum for any work carried out by it prior to such termination and in the case of a termination by the Client shall entitle the Client to be repaid forthwith any sums previously paid under this Agreement (whether paid by way of a deposit or otherwise) and to

recover from the Developer the amount of any direct loss or damage sustained or incurred by the Client as a consequence of such termination.

(3) Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

(4) Any termination of this Agreement cannot be completed within the first two years of the contact unless specified or agreed with the Developer. This can only be completed after the payment of any outstanding fees for the development of any initial or promotional material, or after due consideration give to the introductory offer on which this contract was agreed.

11. Designated Contact
Each party shall designate one person who will act as the primary liaison for all communications regarding the services to be rendered by Developer hereunder.

12. Waiver of Remedies
No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

13. Entire Agreement
This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

14. Assignment
Save as expressly provided in this Agreement, neither party shall assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other.

15. Notices
All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class prepaid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

16. Interpretation

In this Agreement:
(1) words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;

(2) any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns;
(3) the headings to the Clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

17. Law
This Agreement shall be governed by and construed in accordance with the laws of Australia.

18. Disputes
Any dispute which may arise between the parties concerning this Agreement shall be determined by the Australian Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.

19. Severability
Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

20. Independent Contractors
Developer and its personnel, in performance of this Agreement, are acting as independent contractors and not employees or agents of Client.

21. Amendments
No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by the party against which such amendment, change, waiver, or discharge is sought to be enforced.

22. Client Identification
Developer may use the name of and identify Client as a Developer client, in advertising, publicity, or similar materials distributed or displayed to prospective clients.

23. Force Majeure
Except for the payment of fees by Client, if the performance of any part of this agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, dot, fire, judicial or governmental action, labour disputes, act of God or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes. IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorised representatives on.

CLIENT:
Name: (On-line) Notification & Agreement Name: The Developer

Print Name   Signature   Date

WEB DEVELOPER:
Date: (On-line) Notification & Agreement Date: (On-line) Notification & Agreement

Print Name   Signature   Date

SCHEDULE 3
(Additional Services)
After the annual web hosting charges have been paid, the web site will be maintained for a WEBMASTERS fee for a period of two years. At which time the agreement can be reviewed on a rolling date basis.

SCHEDULE 4
(Maintenance)
Additional web site maintenance, such as web traffic booster services and the updating of web pages will be agreed between the client and Sumphero.com in writing or email.

SCHEDULE 5
(Work Order form)
To be agreed with the developer at the appropriate time

Date: NA (mutually agreed)

Authorised by client: _____

Authorised by developer: _____

Describe the project change request:
No changes to date.
Financial impact on project:
Delivery date change for project:
Additional notes:

End