

# Ideamesh Inc. Service Agreement

This document (the "Agreement") sets forth the principles, guidelines and requirements of the Terms of Service of Ideamesh Inc. [hereafter referred to as "Ideamesh"] governing the use by the Client ("Client") of Ideamesh's services and products ("Services and Products"). Ideamesh retains the right to modify these Terms of Service at any time and from time to time and any such modification shall be automatically effective as to all Clients when adopted by Ideamesh and published at <http://Ideamesh.com>. Developer shall be the sole and final arbiter as the interpretation of the following. By utilizing Ideamesh's services and products, the Client agrees to be bound by the terms herein outlined.

## 1. DEFINITIONS.

1.1 "Change Notice" shall have the meaning set forth in Section 3.

1.2 "Change Proposal" shall have the meaning set forth in Section 3.

1.3 "Ideamesh's Tools" means any tools, both in object code and source code form, which Ideamesh has already developed or which Ideamesh independently develops or licenses from a third party.

1.4 "Content" means all text, pictures, sound, graphics, video and other data supplied by Client for the Internet Site, as such materials may be modified from time to time.

1.5 "Design Fee" means the fees set forth in the Work Order for the development services provided pursuant to Section 2.

1.6 "Domain Name" means the domain name specified for the Internet Site by Client from time to time. The initial Domain Name is specified in the Work Order.

1.7 "Intellectual Property Rights" means all know-how, trade secrets, trademarks, copyrights, and patentable inventions, including materials notes, designs, technical data, ideas, know-how, research, reports, documentation and other information related thereto.

1.8 "Internet Site" means the Content made available on pages under the Domain Name.

1.9 "Pre-existing Developer Materials" shall have the meaning set forth in Section 6.2.

1.10 "Proprietary Information" shall have the meaning set forth in Section 8.

1.11 "Specifications" means Client's requirements set forth in the Work Order, as amended or supplemented in accordance with this Agreement.

1.12 "Work Product" means all HTML files, Java files, graphics files, animation files, data files, technology, scripts and programs, both in object code and source code form, all documentation and any other deliverable prepared for Client by Ideamesh in accordance with the terms of this Agreement.

## 2. INTERNET SITE DEVELOPMENT.

2.1 Delivery of Initial Content. Client shall deliver to Ideamesh all Content that Client intends for Ideamesh to incorporate into the Work Product (the "Initial Content"). The Initial Content shall be in the format(s) specified in the Work Order.

2.2 Development and Delivery. Ideamesh shall provide design, programming and other consulting services as specified in the Work Order for the Design Fee set forth therein. Ideamesh will use commercially reasonable efforts to provide the Work Product to Client in accordance with the Milestone Delivery Schedule. Acceptance of the Work Product by Client shall not be unreasonably withheld and will be deemed to have taken place on the first to occur of any of the following: (i) fifteen (15) days have elapsed from the date of delivery without Client having given Ideamesh written notice of a material failure of the Work Product to substantially conform to the Specifications set forth in the Work Order; (ii) Client notifies Ideamesh in writing that it accepts the Work Product or (iii) Client makes any commercial use of the Work Product, other than purely for testing purposes. Client may reject the Work Product only if it does not substantially conform to the Specifications. If Ideamesh receives a notice from Client of a material failure of the Work Product to substantially conform to the Specifications, Ideamesh shall use commercially reasonable efforts to correct the nonconformance. The corrected Work Product shall be delivered to Client for acceptance pursuant to this Section. If Ideamesh cannot, after repeated efforts, remedy such nonconformance, Client may terminate this Agreement provided that Ideamesh returns to Client any fees previously paid to Ideamesh hereunder.

2.3 Project Liaisons. Each party's primary contact for development efforts shall be the project liaisons specified in the Work Order or the person otherwise designated in writing by Client or Ideamesh, as the case may be.

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2.4 Search Engine Registration. When Ideamesh makes the initial final version of the Work Product available to Client, Ideamesh shall propose to Client three (3) search engines and directories where the Internet Site should be registered. If requested by Client, Ideamesh at its expense shall use commercially reasonable efforts to promptly register all Internet Site pages with all (or a designated subset) of such sites.

### 3. MODIFICATIONS.

If either party desires to modify the Internet Site (including the Platform Requirements set forth in the Work Order) at any time during the term of this Agreement, such party shall describe the additional services or deliverables to the other party (the "Change Notice"). Within \_\_\_ days of such Change Notice, Ideamesh shall submit a change order proposal (the "Change Proposal") which includes a statement of any additional charges and, if the Change Notice is provided prior to initial delivery of the Work Product, any adjustments to the Milestone Delivery Schedule resulting from the proposed Change Notice. On Client's written approval of the Change Order, the Change Order will become a part of this Agreement. Ideamesh shall quote all charges for the Change Orders at its then-current standard charges.

### 4. WEB HOSTING.

4.1 Services. Web hosting services will be provided by Ideamesh.com at the fees and charges set forth in Exhibit A. Terms and Conditions for the web hosting services may be found at Ideamesh.com. These terms and conditions may be subject to future change at any time without notification to Client. Client represents and warrants that it will comply with such terms and conditions. Failure to comply will result in the termination of such services. Client further agrees that any breach of such terms and conditions may be subject to Section 9 of this Agreement.

4.2 Domain Name. If requested by Client, Ideamesh shall cooperate with Client in registering the Domain Name with Ideamesh.com. Client shall be responsible for all registration expenses and shall own all right, title and interest in and to the Domain Name and all Intellectual Property Rights related thereto. Unless otherwise specified by Client, Ideamesh shall list Client's project liaison, as the administrative, technical and billing contact.

### 5. PAYMENTS.

5.1 Fees. Except as otherwise specified in the Work Order, Ideamesh shall invoice all fees monthly, and payment terms are net thirty (15). The fee amounts indicated on the Work Order do not include any federal, state, local or other governmental taxes, excise taxes, tariffs or other governmental charges that may be imposed on the sale, transportation, production, storage or export of the Work Product. Client shall pay any and all such taxes and charges and Ideamesh, its agents and distributors, shall have no liability therefore.

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

### 6. OWNERSHIP.

6.1 Work Product. All right, title and interest to Content and Intellectual Property in the Work Product created by Ideamesh under this Agreement shall be owned by Client, but such rights shall be subject to the provisions of this Agreement (including without limitation Section 6.2) and any rights of Ideamesh in Pre-existing Developer's Materials incorporated into the Work Product.

6.2 Pre-existing Developer's Materials. Notwithstanding anything in this Agreement to the contrary, Ideamesh shall retain ownership of all right, title and interest in and to the Ideamesh's Tools, Content and all Intellectual Property developed, purchased or licensed by Ideamesh or on Ideamesh's behalf prior to this Agreement and to all Intellectual Property developed, purchased or licensed by or on Ideamesh's behalf during the term of this Agreement without the active participation of Client ("Pre-existing Developer's Materials"). Ideamesh hereby grants to Client the perpetual, irrevocable, nonexclusive, worldwide, royalty-free right and license to use the Pre-existing Developer's Materials solely in connection with the Work Product.

6.3 Ideamesh's Use of Work Product. Ideamesh shall have the irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute internally or externally, and prepare derivative works based upon the Work Product. It shall be a condition of this paragraph that all Client Proprietary Information and any reference to Client has been removed from the Work Product before such use of the Work Product.

### 7. WARRANTIES AND COVENANTS.

#### 7.1 Ideamesh's Warranties.

(a) Ideamesh warrants that for a period of three (3) months after delivery of the Work Product pursuant to Section 2.2 (the "Warranty Period"), the Work Product when installed and used in accordance with any documentation Ideamesh may provide to Client, will substantially conform to the description of the Work Product as set forth in the Specifications in the Work Order. Client's exclusive remedy and Ideamesh's sole liability under this warranty shall be for Ideamesh (at Ideamesh's own expense) to attempt through reasonable efforts to correct any material failure of the Work Product to perform as warranted, if such failure is reported to Ideamesh within the Warranty Period.

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(b) Ideamesh warrants that it has no knowledge that any part of the Ideamesh's Tools infringe or otherwise make use of any copyright, trademark, trade secret or other proprietary right of any other party. In the event that a court of competent jurisdiction rules by a ruling that cannot be appealed that Ideamesh has, in fact, infringed upon the copyright of a third party, Ideamesh shall either (i) obtain a license from that third party or modify Ideamesh's Tools so that they are not infringing but still functions as represented in this Agreement, or (ii) if such alternative is not commercially reasonable, Ideamesh may terminate this Agreement and return to Client the Design Fees paid by Client hereunder, pro rated over a one(1) year period. The remedies set forth in this Section 7 shall be Client's exclusive remedies in the event of any breach by Ideamesh of the representations set forth in this Section 7.1(b).

(c) Ideamesh makes no warranty regarding the web host services. Client may rely on the warranties provided in the terms and conditions found at [ideamesh.com/tos.php](http://ideamesh.com/tos.php). In the event of a breach of such warranties by Ideamesh, Client agrees not to seek redress against Ideamesh. Client agrees that this is its exclusive remedy and that Ideamesh has no liability whatsoever.

### 7.2 WARRANTY DISCLAIMER; LIMITATION OF LIABILITY.

THE ABOVE ARE THE ONLY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, THAT ARE MADE BY IDEAMESH AND IDEAMESH DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY IDEAMESH, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES IN THIS AGREEMENT. SUCH WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE SO LONG AS IDEAMESH IS MAKING GOOD FAITH EFFORTS TO REMEDY ANY BREACH UNDER THE TERMS OF THE WARRANTY. NEITHER IDEAMESH NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE WORK PRODUCT SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE WORK PRODUCT, EVEN IF IDEAMESH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL IDEAMESH'S AGGREGATE LIABILITY FOR ALL MATTERS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE DESIGN FEE ACTUALLY RECEIVED BY IDEAMESH FROM CLIENT PURSUANT TO THIS AGREEMENT.

7.3 Client Covenants. Client shall not distribute on the Internet Site any Content that: (a) infringes on the Intellectual Property Rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, or antidiscrimination), (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (d) is obscene, pornographic or indecent; or (e) contains any viruses, trojan horses, worms, cancelbots or other computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any system, data or personal information.

### 8. CONFIDENTIALITY.

"Proprietary Information" is confidential and valuable information which a party desires to protect against disclosure or competitive use or which is in written form and designated as proprietary or confidential or is disclosed orally and is designated either orally or in writing as being proprietary or confidential. Ideamesh and Client shall each safeguard the other's Proprietary Information in the same manner as they safeguard their own valuable proprietary information. Each of the parties acknowledges that the other's Proprietary Information constitutes such party's valuable proprietary information and trade secrets, and that unauthorized disclosure or use of this information would cause irreparable damage to the proprietor of such information. Each of the parties expressly agrees and acknowledges that it is entering into this Agreement, and providing the other copies of its Proprietary Information hereunder, in reliance upon the other's foregoing promise of confidentiality. Any provisions herein concerning non-disclosure and non-use of Proprietary Information of a party shall not apply to any such information which (i) is already known to the other party when received from the disclosing party, (ii) is or becomes publicly known through publication or otherwise and through no wrongful act of the other party, (iii) is received from a third party without similar restriction and without breach of this Agreement, (iv) is approved for release or use by written authorization of the other party; provided, however, that prior to any disclosure or use by a party in reliance upon the above-referenced exemptions, the disclosing party will give the other party ten (10) days' notice specifying the information to be disclosed and the exemption being relied upon.

### 9. INDEMNIFICATION.

9.1 Client. Client shall indemnify, defend and hold harmless Ideamesh from and against (a) all liability to others and all claims, causes of action and suits of others, including without limitation employees, subcontractors or agents of Ideamesh, arising out of the Content or out of or from the use by Client of the Internet Site, or the exercise by Client of any rights granted to it under this Agreement, and (b) reasonable cost and expense (including, without limitation, reasonable attorneys' fees) arising from or relating to the foregoing. Client shall be notified promptly of any such claims in writing and, if requested to defend said action, given full and complete authority, information and assistance for the defense of same, provided, however, Client shall have no authority to enter into any settlement on behalf of Ideamesh without the prior written consent of Ideamesh. In all events, Ideamesh shall have the right to participate in the defense of any proceedings with counsel of its own choosing.

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9.2 Ideamesh. Ideamesh shall indemnify and hold harmless Client from and against (a) all liability to Client and all claims, causes of action and suits arising out of or from the direct infringement by Ideamesh of a third party's copyright, patent or trade secrets, and (b) reasonable cost and expense (including reasonable attorneys' fees) arising from or relating to the foregoing. Client shall notify Ideamesh promptly of any such claims in writing, and if requested to defend said action, give full and complete authority, information and assistance for the defense of same; provided, however, that Ideamesh shall have no authority to enter into any settlement on behalf of Client without the prior written consent of Client. In all events, Client shall have the right to participate in the defense of any proceedings with counsel of its own choosing.

### TERM AND TERMINATION.

10.1 Term. The initial term of this Agreement shall be as specified in the Work Order, and this Agreement shall automatically renew on a month-to-month basis thereafter unless and until terminated with thirty (30) days' prior written notice by one party to the other; provided, however, that the term of the web hosting agreement set forth in Section 4.1 shall terminate at the end of the next month following written notice from one party to the other.

10.2 Termination for Cause. Except as otherwise provided for herein, either party may terminate this Agreement upon the material breach of the other party, if such breach remains uncured for thirty (30) days following written notice to the breaching party.

10.3 Termination During Initial Internet Site Development. In the event that Client terminates the Agreement prior to initial acceptance of the Work Product, Client shall return all Work Product to Ideamesh and Ideamesh shall return any Initial Content and refund to Client any portion of the Design Fee previously paid to Ideamesh hereunder, excluding Ideamesh's reasonable expenses to date. All licenses granted hereunder shall terminate.

10.4 Survival. Sections 1, 4.1, 5, 6, 7, 8, 9 and 10 shall survive any termination or expiration of this Agreement.

### 11. GENERAL PROVISIONS.

11.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania. The parties hereto consent to the jurisdiction of the courts of the Commonwealth of Pennsylvania and the United States District Court of Pennsylvania, as well as to the jurisdiction of all courts from which an appeal may be taken from which courts, for the purposes of any suit, action or other proceeding relating to this Agreement or with respect to any transaction contemplated hereby, and expressly waive any and all objections the parties hereto may have as to the venue of such courts to settle or adjudicate any claim or controversy arising hereunder, with respect to any transaction contemplated hereby. The parties hereto further agree, to the fullest extent permitted by law, that a summons or complaint commencing an action or proceeding in any of such courts shall be served properly and shall confer personal jurisdiction if served personally or by registered or certified mail to such party at the address provided for it in this Agreement or as otherwise provided under the laws of the Commonwealth of Pennsylvania.

11.2 Scope of Relationship. No agency, partnership, joint venture or employment is created between the parties as a result of this Agreement. Neither party is authorized to create any obligation, express or implied on behalf of the other party, nor to exercise any control over the other party's methods of operation.

11.3 Severability; Waiver. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

11.4 Headings. Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

11.5 Assignment. Neither party may assign this Agreement or the rights and duties hereunder without the prior written consent of the other party.

11.6 Notice. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given: upon personal delivery; if sent by facsimile, upon confirmation of receipt; if sent by recognized overnight carrier, upon confirmation of receipt; or if sent by certified or registered mail, postage prepaid, five (5) days after the date of mailing.

11.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

11.8 Entire Agreement. This Agreement, including any Exhibits attached hereto, sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement.

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This Agreement may be amended only by a writing or a Work Order signed by both parties. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

### EXHIBIT A

#### CONTENT

1. All Content shall be provided to Ideamesh by Client in the formats specified below:
2. All text shall be provided in [ASCII, RTF, MS Word, PDF, MS Publisher, or HTML].
3. All graphics shall be provided in [TIFF, GIF, JPEG, or PNG format].

#### INTERNET SITE

The Internet Site shall not include any of Ideamesh's Tools.

#### PLATFORM REQUIREMENTS

The Work Product and Ideamesh's Tools provided to Client by Ideamesh shall be compatible with the following browser(s):MS Internet Explorer 8+.

The Work Product shall be implemented for a Windows 2000 server running on the following server software—ASP and PHP 4+.

#### Internet Site Specifications

1. The graphics used in Client's Internet Site shall be in GIF or JPEG.
2. No item in the Internet Site shall exceed 1080 pixels in width.
3. Ideamesh shall develop the Internet Site to project the highest professional image. Ideamesh shall not include any links to other sites without Client's prior written consent.
4. The maximum size for any page shall be 1Mb.