

# DIGITAL SMILES INC.

## WEB DESIGN CONTRACTUAL AGREEMENT



© Digital Smiles Inc. 2006

Phone: 403.809.1176

Fax: 403.208.2176

(please phone first)

[www.digitalsmiles.com](http://www.digitalsmiles.com)

# **DIGITAL SMILES Inc. Website Contractual Agreement**

(this contract supersedes any previous agreement with Tomax7 Web)

**AGREEMENT** (the "Agreement") made this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between \_\_\_\_\_ (herein known as "OWNER") and **DIGITAL SMILES Incorporated** (herein known as "DIGITAL SMILES")

The terms and conditions set forth herein constitute the full and complete agreement between OWNER and DIGITAL SMILES. OWNER's agreement to be bound by these terms is acknowledged by signature at the end of this agreement. The terms contained herein supersede and replace any other agreement or negotiation between OWNER and DIGITAL SMILES whether oral, written, or otherwise including any statements made at any time. *Web Site Development Rates are found under Appendix "A"*

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**NOW, THEREFORE, in consideration of the mutual covenants set forth herein, DIGITAL SMILES and the OWNER hereby agree as follows:**

## **1. BUSINESS RELATIONSHIP**

DIGITAL SMILES remains as an independent contractor and does not operate within the function as an employee, partner, or joint venture of the said OWNER. It is agreed that DIGITAL SMILES will design sites which are deemed as "family orientated and acceptable" and not develop, design, or engage in any morally compromising material. (*Acceptable usage is covered in Appendix "C"*)

## **2. CONFIDENTIALITY**

DIGITAL SMILES acknowledges the fact it will have access to be directly or indirectly exposed to the OWNER's confidential information and will hold in confidence and not disclose or discuss without express written consent of OWNER. It is agreed that the OWNER will furnish DIGITAL SMILES with true and accurate information to the best of OWNER's knowledge and ability.

## **3. RESPONSIBILITY AND RIGHTS**

OWNER IS RESPONSIBLE TO SUPPLY AND/OR OBTAIN THE RIGHTS AND PERMISSION FOR ANY CONTEXT OR IMAGES TO BE USED ON THE SITE. OWNER WILL NOT IMPEDE UPON DIGITAL SMILES TO USE "PIRATED" SOFTWARE OR ENGAGE IN ANY MEANS OF PLAGIARISM. OWNER AND DIGITAL SMILES MUST JOINTLY CLEAR ANY THIRD PARTY INVOLVEMENT IN THE WEBSITE.

DIGITAL SMILES RETAINS THE RIGHT TO DISMEMBER THE WEBSITE IF PAYMENT HAS NOT BEEN RECEIVED, OR THAT THE OWNER HAS BEEN FOUND IN BREACH OF ANY PART OF THE AGREEMENT. DIGITAL SMILES RETAINS THE RIGHT TO WITHDRAW SERVICES WITHOUT PENALTY IF ANY MORALLY COMPROMISING ACTIVITY IS ASSOCIATED WITH THE WEBSITE – LEGAL OR ILLEGAL. (See Appendix C.)

## **4. INTELLECTUAL PROPERTY**

Any development of the HTML, CSS, or JavaScript coding remains as intellectual property of DIGITAL SMILES and are herein leased to the OWNER. The OWNER is not allowed to sell or give the coding to any other party without the written consent of DIGITAL SMILES. Context or images supplied by the OWNER for the site remain the property of the owner.

## **5. TERMINATION OF CONVENIENCE**

At any time during the Term of the Contract, the OWNER shall have the right to terminate this Agreement without cause upon submitting in writing or upon receiving an acknowledged email from Digital Smiles. All refunds shall be pro-rated based upon the number of days for which service remains unused as of that renewal date. OWNER IS RESPONSIBLE FOR ANY INCURRANCE OR COST IN TRANSFERRING OR CANCELLING THE WEBSITE. ANY MONIES TO BE REFUNDED WILL BE DONE AFTER 30 DAYS OF THE AGREED TERMINATION DATE, LESS ANY FEE'S INCURRED BY DIGITAL SMILES.

## **6. ERRORS OF OMISSION LIABILITY**

IN NO EVENT SHALL DIGITAL SMILES BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR LOSS OF BUSINESS AS THE RESULT OF ANY ERROR OF OMISSIONS OR INACTION DONE IN IGNORANCE.

## **7. EMAIL SUPPORT AND LIABILITY**

Basic information and guidelines of the website (such as passwords and email settings) will be given to the OWNER at time of full payment. OWNER understands that emails should NOT be stored on the website. IF DONE SO, THIS IS AT DONE AT OWNERS RISK. DIGITAL SMILES will apply SPAM filters via the website account, but the onus is on the OWNER to ensure proper email spam filters and rules are done at their machine. OWNER recognizes that emails are not encrypted and therefore not secure. OWNER also recognizes DIGITAL SMILES DOES NOT OFFER 24 hour support for website or email problems that may occur.

OWNER RELINQUISHES DIGITAL SMILES FROM ANY LIABLILTY OR LOSS INCURRED DUE TO MISSING OR CORRUPT EMAILS FROM OF SERVER FAILURE, VIRUS, OR SPYWARE INCURRED.

## **8. WEBSITE MAINTENANCE**

The term "MAINTENANCE" will refer to any requests by OWNER to update the website or web account settings. Any corrections to errors done by DIGITAL SMILES are not considered maintenance - but if the error is by OWNER, it is then to be considered as MAINTENANCE.

MAINTENANCE DOES NOT INCLUDE PERSONAL TRAINING TOWARDS EMAIL, APPLICATION USAGE, SPAM FILTERING SETUPS, OR WEB DEVELOPMENT - this is to be billed on a separate contract. *Please see "Appendix B" for rates and restrictions.*

## **9. SEARCH ENGINE POSITIONING**

The term "SEARCH ENGINE" refers to submitting the OWNER's domain name to three (3) leading search engine companies: GOOGLE, MSN, YAHOO (free service route only).

DIGITAL SMILES can also submit OWNER's website to another 200 search engines upon request, but focus on the three aforementioned. OWNER also understands they may be subject to an increase of spam and other related emails as a result of being "listed" with these search engine companies.

RESULTS MAY TAKE FOUR (4) TO SIX (6) WEEKS TO APPEAR AND DIGITAL SMILES CANNOT GUARANTEE PLACEMENTS but will do everything within its power to list the site within top 20 places. OWNER recognizes that *placement is also determined upon the amount of context and external linking the OWNER provides the website.*

DIGITAL SMILES WEBSITE AGREEMENT

**10. SIGNATURES OF PARTIES INVOLVED**

**IN WITNESS WHEREOF, the Parties have read and executed this Agreement as of date given in first paragraph of this agreement.**

**Owner Of Web Site**

**DIGITAL SMILES Web Development**

**Printed Name:**

**Name:** Tom McLaughlin (Digital Smiles Inc.)

**Phone:**

**Phone:** 403.809.1176

**Fax:**

**Fax:** 403.208.2176 (call voice first)

**Signature:**



**Signature:**

**Alternate Email Contact:**

**Signature(s) of Associates, Board Members, or Partners (if needed):**

**Comments or Suggestions:**

## APPENDIX "A"

### 1. WEB DEVELOPMENT FEE\* +GST:

Please CIRCLE the web development package OWNER wishes to purchase:

- |                         |  |
|-------------------------|--|
| A. Five Page Site       | \$ 199.00 (hosting fee separate)           |
| B. 6 - 15 Page Website  | \$ 499.00 (hosting fee included)-          |
| C. 16 - 49 Page Website | \$ 999.00 (hosting & domain name included) |
| D. 50 - 74 Page Website | \$1999.00 (hosting & domain name included) |
| E. 75-100 Page Website  | \$2499.00 (hosting & domain name included) |

\*If OWNER site exceeds agreed amount, OWNER can pay the difference without penalty.

### 2. ANNUAL FEES\* +GST:

\*Fee's are SUBJECT TO CHANGE based upon US/Canada Exchange rate.

- |                            |  |
|----------------------------|--|
| Annual Hosting Fee -       | \$ 150.00/year (subject to change)     |
| Domain Name Registration - | \$ 15.00/year (included in first year) |

### 3. OPTIONAL FEES +GST:

- |   |  |
|---|--|
| Phone/Email Support -   | \$ 10/hour (minimum \$10) or \$5/email |
| One Day (max 5 hours) on-site tutorial<br>- FrontPage or Dreamweaver or Email | \$ 50/hour or \$200/day                |

(Includes small manual – A tutorial book can be purchased separately \$49)

Signature(s):

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## APPENDIX "B"

### 1. Website Maintenance Fee Option +GST

Please **CIRCLE** the Maintenance Option OWNER wish to have with Digital Smiles,  
- a "one page" update is equal to two screen lengths at 1024x762 resolution.

A. Single Update is \$10 per page.  
- *payable at time of submission.*

B. \$25 flat rate for four page update (additionally \$10 per page)  
- *payable at first submission.*

C. \$250 yearly flat rate with four free\* one page updates per month.  
- *Extra pages billed at the end of the month.*  
\*Additional pages will be billed at \$10 each.

D. OWNER does not wish to have website maintenance.  
- OWNER herein understands they are responsible for upkeep of the website and any fees incurred after the website completion date.

Signature or Initials:

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### 2. Keywords for Internet Search Engines: \$75.00+GST

This includes META, title, description and keywords, plus 7 other features to rank your site within the guaranteed top 20 positions on Google. Results start showing within two months. If immediate results are required a \$399 fee will be added to the \$75.

Please supply in order of importance those key words to be searched by.

- |    |    |
|----|----|
| 1. | 4. |
| 2. | 5. |
| 3. | 6. |
- 

Please make all cheques payable to:

Digital Smiles Inc.  
223 Scenic Way NW,  
Calgary, AB, Canada T3L 1B6

GST REG # 85248 9137 RT0001

## APPENDIX “C”

### ACCEPTABLE USE (Moral) CLAUSE

Digital Smiles strictly enforces compliance with its acceptable use terms under this agreement. OWNER agrees to maintain the website in full compliance with the terms set forth below. Failure to so comply is cause for immediate suspension and possible termination.

1. OWNER agrees not to violate the laws, regulations, ordinances or other such requirements of any applicable Federal, Provincial or local government.
2. OWNER agrees not to cause any harm to minors of any kind or to perform any activity which is likely to cause such harm.
3. OWNER agrees not to take any action which encourages or consists of any threat of harm of any kind to any person or property
4. OWNER agrees not to transmit any unsolicited commercial or bulk email. OWNER will not engage in any activity known or considered to be “spamming”
5. OWNER agrees not to infringe any copyright, trademark, patent, trade secret, or other proprietary rights of any third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorized transmittal of copyrighted software.
6. OWNER agrees not to collect or attempt to collect personally identifiable information of any person or entity without their express written consent. OWNER shall maintain records of any such written consent throughout the terms of this agreement and for three years thereafter.
7. OWNER agrees not to undertake any action which is harmful or potentially harmful to the Lunarpages server structure.
8. OWNER agrees not to sublease any account, (ie: [www.yourdomainname.com/client](http://www.yourdomainname.com/client)), or offer free space to other clients. This web site is for single users only.
9. OWNER agrees not to run a banner exchange, free adult tgp (thumbnail gallery post) and free adult image galleries on OWNER’s website.
10. OWNER agrees not to create an “adult” orientated website or use any compromising imagery on the site.