

1. INTERPRETATION AND DEFINITIONS

1.1 IN THIS AGREEMENT AND THE APPENDICES HERETO, UNLESS INCONSISTENT WITH OR OTHERWISE INDICATED BY THE CONTEXT.

1.1.1 "the agreement" means this agreement with the terms and conditions set out herein, as well as all appendices hereto.

1.1.2 "delivery date" means the date on which the service is delivered to the CUSTOMER;

1.1.3 "the effective date" means the date on which the service will be completed and will become operational, and the date from which any fees payable by the CUSTOMER to DEVELOPER will become effective and will be the commencement date of the service fee period;

1.1.4 "the DEVELOPER" means, Finegrafix, Registration No. CK 2001/005941/23, a close corporation duly incorporated according to the laws of the Republic of South Africa

1.1.5 "the CUSTOMER" means the end user, as set out in this service agreement, whether a private individual, close corporation, private company or public company;

1.1.6 "Monthly-Fix Service" means changes, improvements or customization of the existing web site code which may be required to adapt the web site code to the requirements of the CUSTOMER, which have been agreed to by the parties in writing;

1.1.7 "the parties" means the DEVELOPER and CUSTOMER;

1.1.8 "related documentation" means any ancillary documentation relevant to the web site code, and without limiting the generality hereof, includes all user manuals but excluding design documentation;

1.1.9 "web site code" means a composition and integration of different software source codes used to display CUSTOMER specific information on the Internet.

1.1.10 "source code" means the original code pertaining to the integrated software application as originated from the compilation and integration of various other source codes.

1.1.11 "system errors" means all errors where the web site code abnormally ends, and without limiting the generality hereof, includes type mismatch, run time errors and subscript out of range;

1.1.12 "upgrades" means changes or improvements to the web site code;

1.1.13 "upgraded version" means enhancements, improvements, extensions, upgrades and modifications to the web site code released to the CUSTOMER.

1.1.14 "web site development" means the compilation and integration of various other source codes to achieve a fully functional CUSTOMER specific web site.

1.1.15 "Hosting" means specialized techniques to host and service web site code.

1.1.16 "e-mail hosting" means specialised techniques to host and service e-mail accounts.

1.1.17 "development fee" means the cost of upgrading, adding or editing of the CUSTOMER'S existing web site code.

1.2 The insertion of the clause headings is for convenience only and such clause headings shall not be taken into account for the purposes of interpretation.

1.3 If a definition contains a provision which is substantive, conferring any right(s) or obligation(s) on any party hereto, it will be interpreted as being a substantive clause to the contents of this agreement irrespective of the fact that it was only contained in the inter perdition clause(s)

1.3.1 Any period referred to in this agreement will be interpreted and reckoned as follows:

* a reference to a number of days shall be interpreted and executed to exclude the first and include the last.

* If the last day should fall on a Saturday or a Sunday or a public holiday, the last day shall be interpreted and construed to be the next succeeding day which is not a Saturday, Sunday or a public holiday in the Republic of South Africa.

1.3.2 Any reference to one gender shall automatically include the other gender; 16 Any reference to the singular shall automatically include the plural;

2. PREAMBLE

2.1 The CUSTOMER owns the web site code.

3. DEVELOPMENT

3.1 The DEVELOPER will at all reasonable times notify and deliver to the CUSTOMER, information relating to upgrades, modifications, enhancements or any other changes to the web site code.

3.2 In the event of the DEVELOPER detecting errors in the software after the date of signature of this agreement, the DEVELOPER will notify the CUSTOMER forthwith of such errors, at which instance the DEVELOPER will correct such errors within reasonable time.

4. TERM OF THE HOSTING, E-MAIL FACILITIES, MONTHLY-FIX SERVICE

4.1 This agreement shall commence on the effective date, and unless terminated earlier under the provision of clause 12, shall continue for a minimum period of 12 months or until terminated by either the "DEVELOPER" or the "CUSTOMER" on the giving of not less than 30 (thirty) days written notice of termination by either party to the other, provided however that neither the "DEVELOPER" or the "CUSTOMER" shall be entitled to give such written notice of termination to be effective prior to expiry of the minimum period.

4.2 The CUSTOMER agrees to a per annum increase on all recurring services that will be negotiated annually.

5. INSTALLATION

5.1 The CUSTOMER must however note that it is not the responsibility of the DEVELOPER to ensure the Internet connection and the relevant hardware to ensure correct Internet connectivity.

5.2 Server and Network reliability should be of the highest standard and it is the DEVELOPER'S responsibility to provide the CUSTOMER with a highest possible standard of hosting.

6. ACCEPTANCE AND TESTING

6.1 The CUSTOMER will be liable for all costs as agreed upon once the CUSTOMER has tested the web site code and signed a letter of acceptance.

7. MAINTENANCE AND SUPPORT CHARGES

7.1 The DEVELOPER will, at the reasonable request of the CUSTOMER, render maintenance and support services in respect of the web site code under this agreement upon receipt of the prior written consent of the CUSTOMER.

7.2 Such maintenance and support charges will be subjected to additional maintenance and support fees (charges) which the parties will agree to from time to time.

8. OBLIGATIONS OF THE CUSTOMER

8.1 The parties hereto acknowledge the fact that the web site code contains proprietary rights from various source codes and the CUSTOMER will at all times protect all proprietary rights to the best of its ability

9. CONDITIONS PERTAINING TO THE WEB SITE CODE

9.1 The DEVELOPER shall provide the CUSTOMER with a duly authorized and signed letter of undertaking in terms whereof the DEVELOPER irrevocably undertakes to keep a current copy of the web site code and the related documentation and of all upgraded versions and related documentation thereto in a secure place under independent control for the duration of this agreement.

10. DOMAIN NAME REGISTRATION

Domains registered by the "DEVELOPER" will always be registered in the "CUSTOMER'S" name.

11. LIMITATION OF LIABILITY

11.1 The DEVELOPER undertakes to make back-ups of all web site code on a regular basis so that in the event of server hardware failure or data loss for whatever reason, the web site code would be reinstated within reasonable amount of time. However, the DEVELOPER shall under no circumstances be liable to the CUSTOMER for any damages, including loss of profits, loss of data or other incidental or consequential damages, arising out of the use or the inability to use the web site code or incorrect content provided by the CUSTOMER.

12. TERMINATION

12.1 The CUSTOMER will be liable for all costs incurred by the DEVELOPER in connection with the recovery of money owing by the CUSTOMER to the DEVELOPER, which costs will be paid on an attorney and own client scale.

13. CONFIDENTIALITY

13.1 The DEVELOPER acknowledges the fact that it will obtain confidential information in respect of the CUSTOMER'S business or its cessionary or assignee's business(es) emanating from the gathering of information to develop the web site code.

13.2 Any information referred to in the above will be kept confidential and, without derogating from the generality of the foregoing will include information relating to * procedures * materials * information * clients * techniques.

13.3 Any information referred to in the above will, upon notification and instruction by the DEVELOPER, be kept confidential by any of its employees, representatives or agents for which the DEVELOPER accepts complete responsibility

14. ARBITRATION

14.1 Should a dispute arise between the parties in connection with the formation or existence of or the implementation of or the interpretation or application of the provisions of or the parties' respective rights and obligations in terms of or arising out of, or the breach or termination of or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of or any documents furnished by the parties pursuant to the provisions of this agreement or which relates in any way to any matter affecting the interest of the parties in terms of this agreement, that dispute shall, unless resolved amongst the parties to the dispute, be referred to and determined by arbitration in terms of this clause.

14.2 Any party to this agreement may demand that a dispute be determined in terms of this clause by written notice given to the other parties.

14.3 This clause shall not preclude any party from obtaining interim relief from a court of competent jurisdiction pending the decision of the arbitrator.

14.4 The arbitration shall be held -

14.4.1 at Johannesburg;

14.4.2 with only the legal and other representatives of the parties to the dispute present thereat;

14.4.3 in accordance with the provisions of the Arbitration Act, No 42 of 1965 as amended; it being the intention that the arbitration shall be held and completed as soon as possible.

14.5 The arbitrator shall be, if the matter in dispute is principally -

14.5.1 a legal matter, a practicing advocate or attorney of Johannesburg of at least 15 (fifteen) years' standing;

14.5.2 an accounting matter, a practicing chartered accountant of Johannesburg of at least 15 (fifteen) years' standing;

14.5.3 any other matter, any independent person,

14.5.4 agreed upon between the parties to the dispute

14.6 Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.

14.7 Should the parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of 14.3, the arbitrator shall be appointed at the request of either party to the dispute by the President for the time being of the Law Society of the Northern Provinces according to the provisions of 14.5.

14.8 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court referred to in 14.10 at the instance of any of the parties to the dispute.

14.9 The parties hereby consent to the jurisdiction of the Supreme Court of South Africa (Witwatersrand Local Division) in respect of the proceedings referred to in 14.3.

14.10 The parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of 14.8

14.11 The provisions of this clause -

14.11.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provision;

14.11.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement

15. SEVERABILITY

In the event that any of the provisions of this Agreement are found to be invalid, or unenforceable, such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

16. BREACH

In the event of any of the parties ("the defaulting party") committing a breach of any of the terms of this agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from another party ("the aggrieved party") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this agreement or to cancel this agreement or to cancel this agreement forthwith and without further notice, claim and recover damages from the defaulting party.

17. VARIATION

No addition to or variation, consensual cancellation or notation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all parties or their duly authorised representatives.

18. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those, set out herein are binding on the parties.

Thus Done and Signed at _____ on this ___ day of _____ 20__.

By _____ in his/her capacity as

For and on behalf of the Customer

Witness

Thus Done and Signed at _____ on this ___ day of _____ 20__.

By _____ in his/her capacity as

For and on behalf of the Developer

Witness



PO Box 500
 Parklands, 2121
 Dunkeld Court
 16 North Road
 Dunkeld West
 2196

T 011 880 4533
 F 011 880 2304

Debit Order Instruction

(Dainfern Valley Preferred Supplier)

Client		Vat no	
Postal address		Contact person	
Tel		Fax	
Email		Website	

Finegrafix CC is hereby authorised to arrange with my bank to collect the monthly subscription rate against my bank account in terms of a debit order:

Name of Bank: _____

Name of Account: _____

Branch Name: _____

Account Number: _____

Branch Code: _____

Type of Account: Current Transmission Savings Cheque

I/We hereby request, "instruct" and authorise you to draw against my/our account with the above mentioned bank (or any other bank or branch to which, I/we may transfer my/our account) the sum of **R 171.00 (amount includes Vat)**

(and, amount in words) **One Hundred and seventy one Rand only**

on the **25** day of each and every month commencing on _____ and continuing until further notice.

All such withdrawals from my/our bank account by you shall be treated as though they had been signed by me/us personally. I/We understand that the withdrawals hereby authorised will be processed by computer through a system known as ACB Magnetic Tape Service, and I/we also understand that details of each withdrawal will be printed on my/our bank statement or on an accompanying voucher. This authority may be cancelled by me/us by giving you thirty days notice in writing, sent by prepaid registered post, but I/we understand that I/we shall not be entitled to any refund of amounts which you have withdrawn while this authority was in force if such amounts were legally owing to you. Receipt of this instruction by you shall be regarded as receipt thereof by my/our bank(whichever it is or will be).

ASSIGNMENT

I/We acknowledge that the party hereby authorised to effect the drawing(s) against my/our account may not cede or assign any of its rights to any third party without my/our prior written consent and that I/we may not delegate any of my/our obligations in terms of this contract/authority to any third party without prior written consent of the authorised party.

Print Name _____ Signature of payer or authorised official _____

Signed at _____ on this _____ day of _____ 20____