

## TERMS OF SERVICE

### 1.0 FEES

#### 1.1 Fees Payable

A non-refundable deposit of 50% of the total fee payable under the contract is due immediately upon the signing of the contract. 25% of the total fee payable shall become due when the final design layout is approved (in writing by the client) with the final 25% due upon completion of the project (before the website is made "live" on the Client's web host or files are released to the Client).

#### 1.2 Work Commencement Deposit

Pink Sparks Media LLC reserves the right not to begin the work until the said deposit has been paid in full. The fee quoted in the contract does not include the cost of domain registration, hosting set up fee or hosting.

#### 1.3 Maintenance Fees

Maintenance contract fees shall be invoiced on a monthly basis. Fees will be stated on your individual contract. Fees will be assessed on an hourly basis of \$75.00 per hour thereafter. Maintenance will be invoiced once per 30 days beginning on the first day of your maintenance contract. The maintenance fee is due immediately.

#### 1.4 Maintenance Cancellation

The Maintenance contract may be cancelled at any time by either party. Fees paid are non-refundable.

#### 1..5 Refunds

All monies paid to Pink Sparks Media are NON-REFUNDABLE.

### 2.0 ABANDONMENT

#### 2.1 Abandonment

Pink Sparks Media LLC may consider design project abandoned if: (a) Client has not provided Pink Sparks Media LLC with required approvals, feedback (email, IM, or phone), or content (including text, photographs, graphics, etc.) for any consecutive 30-day period during the development of the project; or (b) if Client does not deliver all necessary content, including text and images in a usable digital format, within 30 days of signing of the work agreement. In the event of

abandonment, Pink Sparks Media LLC will notify the Client by email and will invoice Client for all work completed up to the date of notification, based upon the percentage of the project finished, including expenses. All incomplete work will remain the property of Pink Sparks Media LLC. All payments and deposits already made will be applied to these charges and the remainder due, if any, will be invoiced to the Client.

## 2.2 Restart After Abandonment

Should the Client wish to continue development of the project after Pink Sparks Media LLC has deemed it abandoned, Pink Sparks Media LLC will impose a 15% restart fee based on the total, original project estimate to reopen the Client's file and reschedule the project. At that time, Pink Sparks Media LLC reserves the right to adjust all fees quoted in this Agreement for inflation and/or any rate increases realized by Pink Sparks Media LLC in the intervening period. If the Client opts to restart the project after abandonment, Pink Sparks Media LLC reserves the right to continue work on the site according to Pink Sparks Media LLC availability and a new project time line will apply.

## 3.0 DISCLAIMERS

### 3.1 Third Party Work

Pink Sparks Media LLC works hard to only contract with third party vendors that are responsible, honest and qualified however, Pink Sparks Media LLC cannot take responsibility for third-party vendor work.

### 3.2 Copyrights

The Client hereby unconditionally guarantees that all text, graphics, photos, trademarks, designs and any other materials provided to Pink Sparks Media LLC by the Client are either owned by the Client, or used by permission of the owners of said materials. The client agrees to hold harmless, protect and defend Pink Sparks Media LLC from any claim or suit arising from the use of these materials. Similarly, Pink Sparks Media LLC warrants that all graphics and text supplied by Pink Sparks Media LLC for use in the graphic creation are either owned by Pink Sparks Media LLC or used with permission.

### 3.3 Project Copyrights

Copyright to all materials in the project are held by Pink Sparks Media LLC until completion and final payment for the project. At that time, the ownership of the project passes to the Client. Materials such as CGI programs or stock photography which were not originally created by Pink Sparks Media LLC remain

the property of their respective owners, and shall be for the Client's use only. The Client agrees that Pink Sparks Media LLC may list the project or any materials used in Pink Sparks Media LLC portfolio.

### 3.4 Consequential Loss

Under no circumstances will Pink Sparks Media LLC be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its software. The Client should ensure that data on their site is regularly backed up and that a contingency plan is in place to minimize possible losses as a result of software failure.

### 3.5 Status and Duration of Offers

Proposals and offers are valid for a period of 60 days from the date issued. Pink Sparks Media LLC is not bound to honor offers that have expired.

## 4. COMPLETION OF WORK AND PAYMENT

### 4.1 Completion of Work

Pink Sparks Media LLC warrants completing the Work in accordance with its Standard Terms and Conditions to the specifications previously agreed with the Client. Pink Sparks Media LLC will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. Pink Sparks Media LLC will not undertake changes to the specifications of the Work which would increase the cost, without prior written authorization from the Client.

### 4.2 Supply of Materials

The Client is to supply all materials and information required for Pink Sparks Media LLC to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written-copy, logos and other printed materials. These materials should be supplied in usable digital format. Where the Client's failure to supply such materials leads to a delay in completion of the work, Pink Sparks Media LLC has the right to extend previously agreed deadlines for the completion of the Work by a reasonable amount. Where the Client's failure to supply materials prevents progress on the Work for more than 29 days, Pink Sparks Media LLC has the right to invoice the Client for any part or parts of the Work already completed and/or cancel the Work and deem the project abandoned.

### 4.3 Approval of Work

On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify Pink Sparks Media LLC, in writing, of any unsatisfactory points within 7 days of receipt of such notification. Any of the Work which has not been reported in writing to Pink Sparks Media LLC as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected, and the contract will be deemed to have been completed and the balancing payment under Clause 1.1 Fee Payable will become due. The Contract will remain in effect until all obligations have been completed in terms of this Clause.

#### 4.4 Rejected Work

If the Client rejects the Work within the 7 day review period, or will not approve subsequent Work performed by Pink Sparks Media LLC to remedy any points reported by the Client as unsatisfactory, and Pink Sparks Media LLC considers that the Client is unreasonable in her repeated rejection of the Work, the contract will be deemed to have expired and Pink Sparks Media LLC may take any legal measures to recover both payment for the completed Work and reasonable expenses incurred in recovering payment.

#### 4.5 Payment

Prior to the 7 day review period and before the project is officially "launched" online, Pink Sparks Media LLC will invoice the Client for the balancing payment in accordance with Clause 1.1 Fee Payable hereof, which, in the absence of agreement to the contrary, is to be paid by the Client within 15 days of the date that the invoice was issued.

#### 4.6 Scope of Project

If for any reason the scope of the project is adjusted by the Client, Pink Sparks Media LLC will provide a new estimate or bill the Client \$75.00 per hour for additional work not included in the original estimate.

#### 4.7 Remedies for Overdue Payment

If payment has not been received by the due date, Pink Sparks Media LLC has the right to suspend ongoing work for Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 21 days after the due date, Pink Sparks Media LLC has the right to replace, modify or remove the Website and revoke the Client's license of the Work until full payment has been received. By revoking the Client's license of the Work or removing the web site from the Internet, Pink Sparks Media LLC does not remove the Client's obligation to pay any outstanding monies owing.

#### 4.8 Transferring Files

Pink Sparks Media LLC will provide the Client a copy of all pertinent files on a CD at the close of the project.

### 5. INTELLECTUAL PROPERTY

#### 5.1 Offers and Proposals

Offers and proposals made by Pink Sparks Media LLC to potential clients should be treated as trade secrets and remain the property of Pink Sparks Media LLC. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorization from Pink Sparks Media LLC. This includes, but is not limited to, technical features, functionality, aspects of the design and pricing information.

#### 5.2 Warranty by Client as to Ownership of Intellectual Property Rights

The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to Pink Sparks Media LLC for inclusion on the Website. The conclusion of a contract between Pink Sparks Media LLC and the Client shall be regarded as a guarantee by the Client to Pink Sparks Media LLC that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or civil neglect. By agreeing to these terms and conditions, the Client removes the legal responsibility of Pink Sparks Media LLC and indemnifies the same from any claims or legal actions however related to the content of the Client's site.

#### 5.3 Domain Name

Any Domain Name obtained will belong to the Client. The Client agrees to indemnify Pink Sparks Media LLC, including any incidental costs, against any claims that a Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the domain name sought is not a trademark of a third party.

#### 5.4 Licensing

Once Pink Sparks Media LLC has received full payment of all outstanding invoices and the Work has been approved by the Client in accordance with Clause 4.3 hereof, the Client will be granted a license to use the Website and its contents.

#### 5.5 Trade Secrets

Any code that is not freely accessible to third parties and not in the public domain, and to which Pink Sparks Media LLC or their suppliers owns the copyright, may not be copied, published, distributed or passed to any third parties in any form without prior written consent from Pink Sparks Media LLC. Unless previously agreed otherwise in writing, no modifications may be made by the Client or any third party to code to which Pink Sparks Media LLC or their suppliers owns the copyright. Pink Sparks Media LLC acknowledges the intellectual property rights of the Client. Information passed in written form to Pink Sparks Media LLC, and that the Client has indicated is confidential or a trade secret, will not be published or made available in any other way to third parties without the prior written consent of the Client.

## 6. RIGHTS AND RESPONSIBILITIES

### 6.1 Right to Terminate

Pink Sparks Media LLC reserves the right to refuse or break a contract without prior notice, if it is believed that the Client, their Website, or any material is illegal, immoral or otherwise unacceptable.

### 6.2 Events Beyond the Control of Pink Sparks Media LLC

Pink Sparks Media LLC will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of Pink Sparks Media LLC.

### 6.3 Supply and Pricing of Services

Pink Sparks Media LLC reserves the right to use whoever it feels appropriate at the time for third party software and services, and to alter its prices as necessary without prior notice and without affecting existing contractual pricing agreements.

### 6.4 Slander/Libel

Under no circumstances may the Client post negative remarks about Cam Pietralunga or Pink Sparks Media LLC on a website that was created by Pink Sparks Media LLC. You the Client understand that if you choose to do so Pink Sparks Media LLC has permission to remove the negative remarks from your website, delete the entire website and not provide any type of refund, or take legal actions. If Pink Sparks Media LLC decides to take legal action you the Client are responsible for any and all fees that Pink Sparks Media LLC may incur to justify the situation.

## 7. INTERPRETATION

## 7.1 Jurisdiction

This Agreement shall be governed by the laws of Sacramento County in the state of California which shall claim venue and jurisdiction for any legal action or claim arising from the contract between Pink Sparks Media LLC and the Client. The said contract is void where prohibited by law.

## 7.2 Survival of Contract

Where one or more terms of the said contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.

## 7.3 Change of Terms and Conditions

These terms & conditions may change from time to time. The Client will be informed of revisions as and when they are issued if changed during a project.

## 8. DEFINITION OF TERMS

Pink Sparks Media LLC – Camille (Cam) Pietralunga doing business as Pink Sparks Media LLC.

The Client - Any entity which enters into a contract/agreement with Pink Sparks Media LLC

Domain Name - The root address of a website, e.g. www.rootaddress.com. All such names must be registered with the appropriate naming authority, which will usually charge a fee.

Downtime - Time when the website is not accessible via the Internet. This may be because of a technical failure of the Host or because work is being carried out on the site.

Host - The company on whose system the Website physically resides.

Link, Hyperlink - A 'clickable' link embedded on a web page which may take the form of a graphic or text.

Search Engine - A website which contains a directory of websites on the Internet enabling users to search and find websites by subject matter classification.

Website - A collection of web pages and associated code which forms an integrated presence.

The Work - The subject matter of the contract between the Client and Pink Sparks Media LLC.

Slander - A false and malicious statement or report about someone.

Libel - A false publication, as in writing, print, signs, or pictures, that damages a person's reputation.