

## ONLINE PORTFOLIO SUPPLEMENT

This **SUPPLEMENT** amends the Online Portfolio Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the "Agreement") between Color & Ink Studio Ltd. (the "Developer"), a Michigan Corporation, and [client name] (the "Client") for the design, hosting, and/or maintenance of an Online Portfolio (the "Site"). All provisions of the Agreement and its accompanying Terms and Conditions continue in full force and effect, except as modified herein.

1. **eCommerce.** If box is checked,  Developer will add certain eCommerce features to Client's Site. Client agrees to pay Developer a one-time fee for Design Services.
  - 1.1  Developer will add to Client's Site one or more Store Pages, each consisting of one or more Items with such images, descriptions, choices, and/or prices as Client may request, and a Shopping Cart with checkout function linked to Client's Merchant Account.
  - 1.2  Developer will add to Client's Site an Item for making a one-time payment, with such descriptions, choices, and/or prices as Client may request, and linked to Client's Merchant Account.
  - 1.3 Client understands that a separate Merchant Account is required with a third-party provider designated by Developer and that Client is responsible for all fees and expenses associated with such Account.
  - 1.4 Client agrees to grant Developer access to Client's Merchant Account and authorizes Developer to configure the Merchant Account as required and to provide such Support Services as Client may request from time-to-time.
  - 1.5 The accompanying Supplemental Terms and Conditions are incorporated by reference.
  
2. **eMail Marketing.** If box is checked,  Developer will add certain eMail Marketing features to Client's Site. Client agrees to pay Developer a one-time fee for Design Services.
  - 2.1 Client understands that a separate eMail Marketing Account is required with a third-party provider designated by Developer and that Client is responsible for all fees and expenses associated with such Account.
  - 2.2 Client agrees to grant Developer access to Client's eMail Marketing Account and authorizes Developer to configure the eMail Marketing Account as required and to provide such Support Services as Client may request from time-to-time.
  - 2.3 The accompanying Supplemental Terms and Conditions are incorporated by reference.
  
3. **Maintenance and Other Services.** If box is checked,
  - 3.1  Client adds a Maintenance Plan effective \_\_\_\_\_, 20\_\_\_\_ with a quarterly allowance for Developer to modify the Site by adding, deleting or changing text, images, links, or documents on any page. Client agrees to pay Developer a monthly fee for Maintenance Services and a one-time fee for Updates in excess of the allowance and for pages or content added to or deleted from the Site.
  - 3.2  Client terminates a Maintenance Plan as of \_\_\_\_\_, 20\_\_\_\_ and agrees to pay Developer a one-time fee for each future Update requested and pages or content added to or deleted from the Site.
  - 3.3  Client adds a Support Plan for  Hosting  eCommerce  eMail Marketing effective \_\_\_\_\_, 20\_\_\_\_ to provide basic maintenance and support for the related third-party account. Client agrees to pay Developer a monthly fee for Support Services. Additional fees may apply for more comprehensive maintenance and support requested by Client.
  - 3.4  Developer will provide visitor data for Client's Site through Google™ Analytics. Client agrees to pay Developer a one-time fee to install tracking code on Client's Site and set up online access to reports.

PLEASE READ THIS SUPPLEMENT CAREFULLY BEFORE SIGNING IT. BY SIGNING THIS SUPPLEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ IT, UNDERSTAND IT AND AGREE TO BE BOUND BY IT.

**IN WITNESS WHEREOF**, this Supplement has been executed by the undersigned on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FOR DEVELOPER:**

**CLIENT:**

By: Eric A. Law, Vice President  
Address: 1850 Eleven Mile Rd.  
City/State: Berkley, MI 48072  
Telephone: 248-398-6119  
Email: Studio@ShootMyArt.com

Name:  
Address:  
City/State:  
Telephone:  
Email:

**SUPPLEMENTAL TERMS AND CONDITIONS**

**4. Definitions.**

- 4.1 "Merchant Account" means Client's separate account with a third-party provider of electronic commerce services.
- 4.2 "eMail Marketing Account" means Client's separate account with a third-party provider of email marketing services.

**5. Term and Termination.** The provisions of this Supplement commence on the date it is executed and shall continue until terminated by either party under the provisions of the Agreement..

**6. Acceptable Use Policy.** Client agrees to use the Merchant Account and/or the eMail Marketing Account in compliance with applicable law and the provider's acceptable use policies.

**7. Client's Representations.** Client represents and unconditionally warrants to Developer that Client's use of the Site for electronic commerce and/or email marketing does not and shall not violate any law or regulation of any governmental or regulatory/administrative entity or contain any materials that infringe on or violate any right of a third Party, including without limitation any intellectual property, proprietary, contract, moral, privacy or other third Party rights.

**8. DEVELOPER'S WARRANTIES AND REPRESENTATIONS.**

- 8.1 DEVELOPER DOES NOT WARRANT THAT:
  - (a) ELECTRONIC COMMERCE OR EMAIL MARKETING FEATURES ON THE SITE AND THE RELATED SERVICES WILL MEET CLIENT'S REQUIREMENTS;
  - (b) ELECTRONIC COMMERCE OR EMAIL MARKETING FEATURES ON THE SITE AND THE RELATED SERVICES WILL BE CONTINUAL, UNINTERRUPTED OR ERROR FREE;
  - (c) ELECTRONIC COMMERCE OR EMAIL MARKETING FEATURES ON THE SITE WILL DISPLAY AS INTENDED ON ALL WEB BROWSER VERSIONS OR USER COMPUTERS; OR
  - (d) THERE WILL BE NO UNAUTHORIZED ACCESS TO ELECTRONIC COMMERCE OR EMAIL MARKETING FEATURES ON THE SITE OR ANY RELATED DATA ON THE SITE.
- 8.2 THE DEVELOPER CONTENT FURNISHED UNDER THIS SUPPLEMENT IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NOR ARE THERE ANY WARRANTIES CREATED BY A COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE.
- 8.3 CLIENT ACKNOWLEDGES THAT THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS SUPPLEMENT AND FORMED THE BASIS FOR DETERMINING THE FEES CHARGED.
- 8.4 DEVELOPER HAS OR WILL OBTAIN ALL NECESSARY AND APPROPRIATE RIGHTS AND LICENSES TO USE DEVELOPER CONTENT. IN DEVELOPER'S KNOWLEDGE, DEVELOPER CONTENT FURNISHED UNDER THIS SUPPLEMENT DOES NOT INFRINGE ANY COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

**9. LIMITATION OF DEVELOPER'S LIABILITY.**

- 9.1 DEVELOPER SHALL NOT BE LIABLE FOR ANY LOSS OR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST BUSINESS OR LOST DATA OF CLIENT, REGARDLESS OF THE FORM OR ACTION, WHETHER IN BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, MISREPRESENTATIONS, STRICT LIABILITY, OR OTHER TORTS, EVEN IF DEVELOPER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. CLIENT AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY SHALL BE THE REDUCTION OR RETURN OF FEES PAID TO DEVELOPER.
- 9.2 DEVELOPER SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE SITE, CLIENT CONTENT OR

CLIENT'S MERCHANT OR EMAIL MARKETING ACCOUNTS THROUGH ACCIDENTAL, FRAUDULENT OR UNAUTHORIZED MEANS OR DEVICES.

**9.3** DEVELOPER SHALL NOT BE LIABLE FOR ANY CLAIM OR DEMAND MADE AGAINST CLIENT BY ANY THIRD PARTY, EXCEPT TO THE EXTENT SUCH CLAIM OR DEMAND RELATES TO COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS IN DEVELOPER CONTENT.

**9.4** CLIENT ACKNOWLEDGES THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL PART OF THIS SUPPLEMENT AND IN THEIR ABSENCE DEVELOPER WOULD NOT ENTER INTO THIS SUPPLEMENT.

**10. INDEMNIFICATION.**

- 10.1 CLIENT SHALL INDEMNIFY, DEFEND AND HOLD DEVELOPER, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES AND COSTS, CHARGES AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, OF DEFENDING ANY THIRD PARTY CLAIM OR SUIT ARISING OUT OF ANY:
  - (a) ELECTRONIC COMMERCE OR EMAIL MARKETING ACTIVITIES OF CLIENT;
  - (b) BREACH OF CLIENT'S REPRESENTATIONS CONTAINED IN THIS SUPPLEMENT;
  - (c) NEGLIGENCE OR WILLFUL MISCONDUCT OF CLIENT;
  - (d) ACTUAL OR ALLEGED INFRINGEMENT OR VIOLATION OF ANY RIGHTS OF A THIRD PARTY, INCLUDING WITHOUT LIMITATION ANY INTELLECTUAL PROPERTY, PROPRIETARY, CONTRACT, MORAL, PRIVACY OR OTHER THIRD PARTY RIGHTS.

CLIENT SHALL PROMPTLY NOTIFY DEVELOPER IN WRITING OF ANY SUCH CLAIM OR SUIT.

**10.2** DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD CLIENT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES AND COSTS, CHARGES AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, OF DEFENDING ANY THIRD PARTY CLAIM OR SUIT ARISING SOLELY OUT INFRINGEMENT OF COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS IN DEVELOPER CONTENT.

**10.3** DEVELOPER RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER SUBJECT TO INDEMNIFICATION AND, IN SUCH CASE, CLIENT AGREES TO COOPERATE WITH DEVELOPER'S DEFENSE OF SUCH CLAIM.

**11. General Provisions.**

- 11.1 **No Agency.** Nothing contained in this Supplement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties and a third-party service provider. Client acknowledges that Developer is not a party to Client's separate Merchant Account and/or eMail Marketing Account.
- 11.2 **Complete Agreement.** This Supplement, together with all Attachments, sets forth the entire understanding and agreement between the parties with respect to the subject matter thereof. It replaces and supersedes any and all prior written or oral agreements, documentation, and understandings between the parties relating to such subject matter. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein. In the event of a conflict between the provisions of the main body of the Supplement and any Attachments, the Supplement shall take precedence.
- 11.3 **Modification.** Modifications to this Supplement, including any Attachment hereto, shall be enforceable only if in writing and signed by both parties.
- 11.4 **Survival.** The provisions of Sections 8 through 10 of this Supplement shall survive any termination of the Agreement.