

## **danbailey.com Service Agreement**

THIS AGREEMENT is made and entered into between danbailey.com, a D.B.A. of Dan Bailey, located at 4880 Lower Roswell Road, Suite 165, Marietta, Georgia 30068, hereinafter referred to as ("DBCOM") and you, the Customer ("Customer" or "You"), who wish to use the Service(s) of DBCOM in accordance with this Agreement. You and DBCOM are collectively referred to in this Agreement as the "parties."

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

### **1. DEFINITION:**

"Agreement" shall refer to the complete and entire understanding between the parties, exclusively represented by this instrument, which you are now reading. "Agreement" shall not refer to any statement, supposition, or understanding not recorded in writing in this document.

**2. SERVICE DESCRIPTION:** As a World Wide Web, Information Technology, and Marketing Services Provider, DBCOM provides Internet Web hosting, web site design, ecommerce, domain registration, print marketing material design and associated services, hereafter referred to as the "Service" or "Services." For the web hosting, DBCOM maintains a dedicated server computer and other equipment (collectively, the "Network") located in North Carolina, USA, and integrated with the Internet. This Network sends and receives data and information via the World Wide Web. Customer wishes to use DBCOM Services to in the creation of marketing materials, written materials, web site design and/or to connect to the Web and establish an Internet Web presence by utilizing the various resources of DBCOM's Network and DBCOM's Services, such Services further described below. The quantity, type, and duration of Services provided to Customer shall be as Customer has already requested, either in writing or orally, and confirmed by payment.

### **3. CONDITIONS:**

a. The foregoing constitutes a legal and binding contract between DBCOM and Customer, which does not extend to any other person or entity.

b. The duration of this Agreement, as to its Initial Term and any renewal thereof, shall be as Customer has requested, either in writing or orally, and confirmed by payment.

**4. WARRANTIES and LIMITATION OF LIABILITY:** With respect to the Services to be provided hereunder, Customer understands and acknowledges that DBCOM MAKES ABSOLUTELY NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. Customer further agrees that DBCOM shall not be liable to Customer for any claims, damages, or loss of profit which may be suffered by Customer or any other entity in any respect for direct, indirect, consequential, actual, or punitive damages arising out of or in relation to the Services provided hereunder, including, but not limited to, losses or damages resulting from loss of data due to delays, non-deliveries, or Service interruptions. The utilization of any data or information received by Customer from use of the Services to be provided by DBCOM is at Customer's sole and absolute risk. DBCOM specifically disclaims and denies any responsibility for the completeness, accuracy, or quality of such data or information.

### **5. TRADEMARKS AND LICENSING**

a. Customer shall not use the DBCOM name, trademarks, trade names, or logos in connection with the operation of Customer's business, except as may be provided for in this Agreement.

Neither party shall use the other party's name, trademarks, or logos in either its own corporate name or in any fictitious name. Neither party nor its employees or agents shall knowingly remove or alter any trademark, trade name, copyright, or other proprietary notices, legends, or symbols from any of the other party's products or documentation or intellectual property.

b. Neither party shall take any action, or intentionally omit to take any action, that would jeopardize, limit, or interfere in any manner with the ownership of the other party in the other party's products, services, documentation, or intellectual property. Title to and ownership of all copies of any products, Services, software, documentation, or Internet Services developed by or for DBCOM or owned by DBCOM through the term of this Agreement, whether in machine-readable or printed form, and including, without limitation, any derivative works, compilations, or collective works thereof, and all related technical know-how, and all rights therein (including without limitation rights in patents, copyrights, and trade secrets applicable thereto), are and shall remain the exclusive property of DBCOM and its suppliers. Customer shall not take any action to jeopardize, limit, or interfere in any manner with DBCOM's ownership and rights therein.

c. Customer agrees not to disassemble, de-compile, or reverse-engineer any of DBCOM's software or any of DBCOM's source code, with the exception that the Customer may use another programmer to make modifications to DBCOM programming code that DBCOM has provided to the Customer.

d. Customer agrees not to copy or allow to be copied, except for backup purposes or modifications as described in 5(c) above, any computer code provided to the Customer by DBCOM. Customer further agrees that any web site, web site component, copy writing or any other programming provided by DBCOM may not be duplicated, sold, given, leased, or transferred in any way to any other party, except with written permission of DBCOM.

## 6. PAYMENT POLICIES:

a. As consideration for DBCOM's promise to provide to Customer the Services described hereunder, Customer agrees to pay DBCOM, at the time of submitting the order, all the DBCOM fees for the Services which Customer has ordered, regardless of the payment selections Customer has chosen.

b. All set-up, Initial Term and deposit fees are non-refundable, in whole or in part, even if Customer's Web hosting or other Service account shall be suspended or cancelled prior to the end of Customer's then-current term. Any termination or cancellation by DBCOM or Customer shall not relieve Customer of the obligation to pay all fees accrued prior to such termination or cancellation.

c. If Customer pays by check, restrictive endorsements or other statements on checks accepted by DBCOM shall have no effect. Customer shall reimburse DBCOM for all administrative costs (including reasonable attorney fees) associated with collecting delinquent or dishonored payments, to include chargebacks. At DBCOM's sole option, interest charges may be added to any past due amounts at the lower of 1.5% per month or the maximum rate allowed by law.

d. the nature of some of the Services, also known as "projects", performed by DBCOM, including, but not limited to, web site design, require that the Customer provide various materials, collaboration, reviews and approvals in order for DBCOM to complete the Service. If, for a continuous period of 45 days, the Customer substantially fails to provide requested materials, collaboration, reviews or approvals, such failure to be determined at the sole discretion of DBCOM, the Service project will be considered "suspended." The Customer agrees

that such a suspension interferes with DBCOM's providing of the Service in a manner that causes extra time usage and costs to DBCOM. Customer further agrees that, for each 45 days period of suspension, DBCOM may, at its discretion, charge the Customer an additional fee equal to 10% of the total original cost of the Service.

e. Customer agrees that if a project remains "suspended", as described in "d" above, for a period of 90 days, DBCOM may, at its sole discretion, consider the project abandoned by the Customer and DBCOM shall have no further obligation to perform under this agreement. Customer further agrees that any fees collected from the Customer by DBCOM for a project later deemed abandoned are non-refundable and DBCOM has no obligation to provide the Customer with any work product that resulted from the Service. Work product includes, but is not limited to, programming code, digital graphics, logos, artwork, data, designs or documentation.

f. When DBCOM prices Services on a "fixed price" basis, rather than an hourly basis, that fixed price is offered based on delivering the Services as described in a written proposal. Customer agrees that the nature of custom programming and our other Services is such that there can be unexpected costs, minor changes in the specifications, and/or misinterpretations of specifications. Therefore, DBCOM reserves the right to unilaterally raise the price of a "fixed price" Service by up to 10%, at its discretion. Changes resulting in a greater than 10% increase in price will be agreed two by the parties prior to the changes being performed.

g. In the event that Customer fails to pay for Services as agreed, DBCOM shall be entitled to unilaterally suspend its obligation to perform under this Agreement, in whole or in part, and to discontinue all or some Services, at its option, until payment is made.

7. BREACH AND REVOCATION: In the event that DBCOM may at any time believe that the Service is being utilized for unlawful purposes by Customer, or in contravention of the terms and provisions of this Agreement, DBCOM may unilaterally and immediately discontinue such Service to Customer without liability. Without limitation, this provision will include adult-content matters, unsolicited bulk emailing, and failure to pay in accordance with this agreement.

8. SECURITY INTEREST IN CUSTOMER'S DATA: Customer agrees that DBCOM shall have a security interest in Customer's data, and shall have the right in DBCOM's sole discretion to suspend, cancel, transfer, or modify Customer's Web hosting account in the event that Customer fails to pay or otherwise breaches this Agreement. Customer understands and acknowledges that by placing Customer's Registered Name and Customer's information on DBCOM's servers, Customer has granted DBCOM a security interest in customer's data.

9. DEFAULT; ACCELERATION; AND WAIVER OF NOTICE: Should Customer fail to pay Customer's bill as required by this Agreement, or should Customer otherwise breach this Agreement, DBCOM may declare Customer in default and require Customer to pay the entire debt immediately and without prior notice.

10. INDEMNIFICATION: Customer shall indemnify and hold harmless DBCOM from any and all loss, cost, expense, and damage on account of any and all manner of claims, demands, actions, suits, proceedings, judgments, costs, and expenses that may be initiated against DBCOM and DBCOM's owners, officers, directors, and employees for any Service provided to Customer by DBCOM, to include Web space content that violates any copyright, trademark, or service mark; any proprietary right of any person or entity; any state and/or federal laws or regulations; or contains any defamatory matter.

11. **CHANGES IN TERMS OF AGREEMENT:** DBCOM reserves the right to make changes to the terms and conditions of this Agreement at any time, advising of the change and the effective date thereof by publishing it to the appropriate DBCOM Web site, but with changes in fees being effective only at the end of any period for which Customer has prepaid. Utilization of the Service(s) by Customer following the effective date of such change(s) shall constitute acceptance by Customer of such change(s). Customer is solely responsible for staying informed with respect to changes in this Agreement, which is published on-line, as indicated above, and are readily available for public viewing.

12. **ENTIRE AGREEMENT AND UNDERSTANDING:** This instrument constitutes the entire Agreement between the parties, and represents the complete and entire understanding of the parties with respect to the subject matter of this Agreement.

13. **GOVERNING LAW:** this Agreement is governed by Georgia law without regard to conflict of law provisions. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration, and administered by the American Arbitration Association under its Commercial Arbitration Rules. Any such arbitration will be governed by Georgia law and will be held in Cobb County, Georgia. The arbitrator will be an expert in the field of Internet services. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

14. **SEVERABILITY:** In the event that any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid in whole or in part for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

15. **INTERPRETATION:** The format, words, and phrases used herein shall have the meanings generally understood thereby in the Computer/Software/Internet Industries. This Agreement shall be construed according to its plain meaning. In the event any ambiguity shall be found herein, interpretation shall be based on the intent of the parties, rather than a construction automatically against the interests of the drafting party.

16. **WRITTEN PROPOSALS:** Many of the Services performed by DBCOM will be described in written proposals to the Customer. If, any portion of the written proposal seems to be in conflict with this agreement, the Customer agrees that this agreement supersedes the portion of the written proposal in question, and that the Customer is bound by the terms of this agreement.

17. **SERVICES:** This is a list of the normal Services performed by DBCOM. Any Service performed by DBCOM, even if not listed here, will be subject to this agreement.

a. **Hourly Services.** Unless a fixed price proposal with a description of Services to be performed is tendered to the Customer, all Services are performed on an hourly basis at the prevailing hourly rates, billed in thirty minute increments, with a one hour minimum. The current hourly rate is \$90 per hour.

b. **Writing Services.** Including: copy writing, script writing, copy review, editing, business names and tag lines. Writing Services may be billed as an hourly Service, a fixed price Service or as a component of other Services. Customer specifically understands and agrees that DBCOM does not check its work for conflicts with existing copyrights, trademarks, service marks or other similar devices.

c. **Web Site Design.** This Service will be performed based on a written proposal that describes the scope of work and pricing of the project. The project will be deemed as complete when the web site is appreciably demonstrated as meeting the requirements of the scope of work. Final

payment under the written proposal constitutes completion and acceptance of the site by the Customer. The Customer has 90 days from the date of completion to report "bugs", fixes or errors in the site work to DBCOM for change or repair without charge. After 90 days any changes to the site will be considered Site Maintenance. Customer agrees that web site design and programming is for use on a single web site.

d. Web Site Maintenance. Depending on the extent of the repairs or modifications made, web site maintenance may be performed as an Hourly Service or as a fixed price Service, as agreed to by the parties.

e. Custom Programming. DBCOM provides custom programming for a variety of project types and business solutions. This Service will be performed based on a written proposal that describes the scope of work and pricing of the project. The project will be deemed as complete when the web site is appreciably demonstrated as meeting the requirements of the scope of work.

f. Logos. DBCOM designs logos for businesses to use in all their printed and electronic media. Logo designs based on a fixed price basis will include: Step 1 - three designs for review; Step 2 - up to two of those original designs may be revised once; Step 3 - one of the designs from Step 2 may be revised once; Step 4 – final revision to the design used in Step 3. Any additional revisions or changes will be made as an Hourly Service in addition to the original fixed price. Digital files will be provided in .jpg and a vector based .eps file.

g. Print Marketing Materials. DBCOM will design print marketing materials for our Customers, to their specifications, and provide digital print files the Customer can provide to the printing service of the Customer's choice. The Customer agrees to accept all responsibility for proofing any print files before having them printed. Customer also agrees that DBCOM is not responsible for any print costs, or associated costs, of any kind, regardless of any error on the part of DBCOM or the use by the Customer of any printing service that DBCOM may refer the Customer to.

h. Web Site Hosting. DBCOM provides its web site hosting customers with space on its network in order for the Customer's web site to be available on the World Wide Web. The fees for these Services are paid monthly, quarterly or annually in advance. If the Customer cancels the Service, DBCOM is not obligated to refund any fees collected, in whole or in part. DBCOM may unilaterally discontinue hosting Service to a customer upon 30 days notice and will issue a refund of any prepaid fees, pro-rated for the unused portion of the Service, with the exception that any Service discontinued based on Section 7 above does not require 30 days notice. DBCOM makes no claims as to the percentage of "up-time" for the network.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, and in consideration of the covenants and agreements contained herein, do hereby execute this instrument, with each party warranting its ability to enter into this Agreement for the person or entity herein named as a party hereto. By placing a telephonic order with a DBCOM representative, by acceptance of a written proposal as shown by making whole or partial payment, by making payment on a DBCOM invoice, or by making a payment after having been notified of this agreement being posted on the web site, Customer agrees to all the terms and conditions of this Agreement.