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Online Presence Development Agreement THIS ONLINE PRESENCE DEVELOPMENT AGREEMENT (“OPDA”) is made and entered into as of this _____ (the “Effective Date”), by and between _____ (the “Sponsor”), an organization at _____ and Pod Creative (the “Developer”), a business with offices at 4040 Marsden Road, Courtenay, BC, V9N 9N7.

WHEREAS:

- A. Sponsor desires to engage Developer to develop, create, and deliver an Online Presence (as hereinafter defined);
- B. Developer is interested in undertaking such work;
- C. Sponsor and Developer mutually desire to set forth the terms applicable to such work;

NOW THEREFORE, for the mutual consideration set forth herein, the adequacy of which is hereby acknowledged, Sponsor and Developer, agree as follows:

1. Definitions

1.1 “Code” means HTML, JavaScript, CSS and PHP, computer programming/formatting code.

1.2 “Deliverables” means all Code, Graphics, Documentation, reports, and other materials developed by Developer in the course of its performance under this Agreement, and any other items necessary for the operation of Sponsor’s Web Site (other than third party operating system software, third party networking software, Web Browsers, and hardware), including all Enhancements thereto.

1.3 “Derivative Work” means a work that is based upon or derived from one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion, or re-use of such pre-existing work or where such pre-existing work may be recast, transformed, or adapted (including by linking a pre-existing work into the Derivative Work so that a Web Browser would display elements of the pre-existing work in the Derivative Work), and that, if prepared without authorization of the owner of the copyright in such pre-existing work, would constitute a copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such a pre-existing work.

1.4 “Documentation” means written or typed materials such as manuals and principles of operation that may be developed by Developer in the course of its performance under this Agreement.

1.5 “Enhancements” means changes or additions to Code and related Documentation.

1.6 “Internet” means the worldwide network of computers commonly understood to provide some or all of the following features, among others: electronic mail, file transfers through File Transfer Protocol (“FTP”), Telnet

access to local and remote computers, UseNet Newsgroups, Gopher access to information on local and remote computers, Wide Area Information Servers (“WAIS”), and World Wide Web access.

1.7 “Online presence” refers to all the online services, including social media channels, personally hosted services, cloud-based or third party services, that form part of the Sponsor's presence on the Internet. Some may be created by the Developer, while others may exist due to the Sponsor's online interaction with others.

1.8 “Outside Web Site” means any Web Page or other material that can be accessed using a Web Browser other than the Sponsor’s Web Site.

1.9 “Social Media” refers to a variety of third-party online services that can be personalised, branded and used to interact with the public at large or a more defined target audience.

1.10 “Web Server” means the computer or computers that Developer uses to make Web Sites accessible to Internet users.

1.11 “Web Site” means a series of interconnected Web Pages residing in a single directory on a single Web Server.

2. Engagement

The Sponsor hereby engages the Developer to develop, create and deliver the Deliverables as set out in Schedule “A” of this Agreement in the phases, time frames and for the cost specified therein. The parties agree that the Developer will proceed with work in a subsequent phase only after necessary approvals and payments, if any, have been given or made. Any delays in such approvals or payments shall delay the work and the time-frames stated therein for not less than an equivalent amount of time, taking into account weekends and holidays as non-work days. Upon execution of this contract, Sponsor shall pay Developer a non-refundable deposit of 25% of the total budget as estimated in Schedule “A” (the “Deposit”).

3. Change Orders

Changes in this Agreement or in any of the phases or Deliverables under this Agreement shall become effective only when a written change request is executed by the managing partner of Sponsor, on behalf of Sponsor, and accepted by the Developer or the Developer's representative, on behalf of Developer. Before any change orders are accepted, the parties shall agree on a fee for such changes.

4. Delivery of Deliverables

Upon Sponsor’s approval of its final Online Presence, Developer shall deliver all Deliverables to Sponsor. Documentation shall be delivered in electronic format. Code shall be delivered in electronic format. The transfer of electronic materials shall be accomplished by copying them to media to be supplied by Sponsor or, at Sponsor’s option, by modem, FTP, LapLink, or electronic mail transfer. Developer shall maintain its back-ups and one set of the final materials provided to Sponsor for a period of six months after Sponsor’s approval of its final Online Presence. If this Agreement is terminated prior to final approval, or at the expiration of this six-month period, Developer will destroy all of its copies of Sponsor’s Web Site

(including all back-ups thereof) and “wipe” all files constituting final or working copies of Sponsor’s Web Site

(other than the final copy hosted on Sponsor's Web Server) from Developer's computers and back-up materials unless otherwise directed in writing by the managing partner of Sponsor.

5. Other Services

Online Presence Maintenance. If agreed and specifically set out in Schedule "A", Developer agrees to maintain Sponsor's Online Presence on a month-to-month basis with payment terms as set out in Schedule "A" hereto. If any payments are more than fifteen (15) days late, Developer may remove the Sponsor's Online Presence without notice and without liability for any losses or costs (including loss of business or profits) related thereto and pursue any other rights and remedies it may have.

6. Compensation

6.1 Compensation

The Sponsor shall pay the Developer the amounts set out in Schedule "A" plus taxes upon completion of each Phase of the work specified therein ("Compensation").

6.2 Expenses

Except as expressly agreed otherwise in writing by the Developer, Sponsor shall bear all of its own expenses arising from this Agreement, including (without limitation)

photography/stock photos, hosting, domain-name registration, credit card transaction services, server security certificates and email services.

6.3 Partial payment in the event of termination

If this Agreement is terminated for any reason, Developer shall be entitled to payment for work done up to the date of termination. If Sponsor terminates this agreement, the Deposit shall be forfeited.

7. Confidentiality and Non-competition

7.1 Confidentiality

Developer shall treat this project as confidential in accordance with paragraph 8.2 below. After Sponsor has approved its final Online Presence, however, Developer may list Sponsor as a client of Developer and may include a link to Sponsor's Web Site on Developer's Web Site.

7.2 Non-competition

Developer shall be free during and after the development of Sponsor's Web Site to develop Web Sites for any other client.

7.3 Confidential information of Sponsor

From time to time Sponsor may provide its own confidential business and technical information to Developer in connection with the work to be performed by Developer hereunder. Such information shall be designated as

“confidential” upon or prior to disclosure by Sponsor. Developer shall use its best efforts to prohibit any use or disclosure of Sponsor’s confidential information, except as necessary to perform work hereunder, unless and until disclosed publicly by Sponsor.

8. Ownership and Rights

8.1 Ownership of work product

Subject to payment in full of the Compensation, the Sponsor has the right to use, modify and/or update all graphics, illustrations and designs created by the Developer for Sponsor’s own Online Presence, however, the Developer shall own the copyright in and to all creative and artistic elements it creates for the Sponsor (the “Design Elements”). The Sponsor shall not copy, sell, loan or distribute the Design Elements or any modification or Derivative Work thereof to any other party or Outside Web Site or use or permit the use of any of the foregoing in any other media without the written consent of the Developer.

8.2 Indemnification/no infringement

In performing services under this Agreement, Developer agrees not to design, develop or provide to Sponsor any elements that infringe one or more patents, copyrights, trade marks, or other intellectual property rights unless such elements or underlying work thereof have been provided to Developer by Sponsor. Developer agrees to indemnify, defend, and hold Sponsor, its employees, officers, directors and agents, harmless from and against any liability, debt, or expense (including reasonable legal fees and disbursements) arising out of or resulting from a breach of this Agreement by Developer, its employees, contractors, agents, officers or directors.

8.3 Sponsor Indemnity

Sponsor agrees to indemnify and hold harmless the Developer, its employees, officers, directors and agents from and against any liability, debt or expense (including reasonable legal fees and disbursements) arising out of or resulting from any breach of this Agreement by Sponsor, its employees, contractors, agents, officers or directors.

9. Representations and Warranties

9.1 Sponsor represents and warrants that: (i) it has the right to enter into this Agreement;

(ii) all material provided to the Developer shall be owned by Sponsor and same shall not breach any personal or property right of any third party.

9.2 Developer represents and warrants that:

(a) it has the right to enter into this Agreement;

(b) it owns all rights in and to the material created by it, unless same has been provided to it by the Sponsor.

10. Term and Termination

10.1 Termination

This Agreement may be terminated by either party in the event of a material default by the other if such default persists for a period of ten (10) days following notice of such default by the non-defaulting party to the defaulting party, unless such default is non-payment, in which case, notice shall be five (5) days.

Notwithstanding any termination, the Sponsor shall pay the Compensation due to Developer for work performed or services rendered to the date of termination, whether or not a payment was triggered per Schedule "A" for such work performed.

10.2 Survival

In the event of any termination of this Agreement, paragraphs 6.1, 7.3, 9 and 10 survive and continue in effect and shall enure to the benefit of and be binding upon the parties and their legal representatives, heirs, successors, and assigns. The termination of any provision of this Agreement shall not excuse a prior breach of that provision.

11. Miscellaneous

11.1 Force majeure

Either party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party other than failure to pay; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause of such delay or failure.

11.2 Multiple counterparts

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

11.3 Section headings; Schedules

The section and subsection headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. The Schedules referred to herein and attached hereto, or to be attached hereto, are incorporated herein to the same extent as if set forth in full herein.

11.4 No waiver

No delay or omission by either party hereto to exercise any right or power occurring upon any non-compliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof.

11.5 Governing law/Consent to jurisdiction and venue

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the parties attorn any dispute to the courts of British Columbia.

11.6 Entire Agreement

Each party to this Agreement acknowledges that this Agreement constitutes the entire Agreement of the parties with regard to the subject-matters addressed in this Agreement, that this Agreement supersedes all prior or contemporaneous agreements, discussions, or representations, whether oral or written, with respect

to the subject-matter of this Agreement, and that this Agreement cannot be varied, amended, changed, waived, or discharged except by a writing signed by all parties.

11.7 Time of the essence

Time is of the essence to the performance of the parties' obligations under this Agreement.

11.8 Notices

Under this Agreement if one party is required or permitted to give notice to the other, such notice shall be deemed given either: (a) when transmitted by electronic mail (confirmation of receipt requested); or (b) three business days after depositing the notice in the Canadian mail, first-class postage prepaid, if the notice was sent to the other party at the address or electronic mail address specified above, or at such other address or electronic mail address.

11.9 No assignment

Neither party may, without the prior written consent of the other, assign its rights or obligations under this Agreement to a third party.

IN WITNESS WHEREOF, Sponsor and Developer have caused this Agreement to be signed and delivered by their duly authorized agents, all as of the Effective Date stated above.

Client Company: _____

Authorized Signatory Name: _____

Title: _____

Signature: _____

Pod Creative

Authorized Signatory Name: Pieter Vorster

Title: Owner



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