ONLINE PORTFOLIO AGREEMENT

This **AGREEMENT** is made 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") in accordance with the accompanying Terms and Conditions.

1. **Design Services.** If box is checked, ☐ Developer will create for Client a Site consisting of a Home Page and one or more Gallery and/or Text Pages each containing images, text, and/or such other content as Client may provide. Client agrees to pay Developer a one-time fee for Design Services.

2. **Hosting Services.** If box is checked,
   2.1 ☐ Developer will provide web hosting for Client's Site on Developer's web space. Client agrees to pay Developer a one-time fee to install the Site on Developer's web space and register the Site with certain web search engines and to pay a monthly fee for Hosting Services.
       (a) ☐ Developer will register the domain name "   " for Client's use with the Site and provide one email account under the domain name and quarterly reports of basic visitor data.
       (b) ☐ Developer will establish a directory titled "   " on Developer's web space for Client's use with the Site. No email account or reports of visitor data are provided by Developer.
   2.2 ☐ Client will arrange for domain name registration and web hosting with a provider of its choosing**.**
       (a) Client understands that a separate contract with a hosting provider is required and that Client is responsible for all costs of registering the domain name and hosting the Site. Client agrees to pay Developer a one-time fee to install the Site on Client's web space and register the Site with certain web search engines. Additional fees may apply for Developer assistance with registration or hosting.
       (b) Client agrees to grant Developer full access to Client's web space and authorizes Developer to install the Site and to provide such Maintenance Services as Client may request from time-to-time.
       (c) While the Site is under construction, Developer will host it in a directory on Developer's web space. If Client has not arranged for domain name registration and hosting when the Site is completed and accepted by Client, Client agrees to pay Developer's monthly fee for hosting the Site in a directory on Developer's web space until it is installed on Client's web space.
   2.3 ☐ 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.

3. **Maintenance Services.** If box is checked,
   3.1 ☐ Client has selected a Maintenance Plan that includes a quarterly allowance for Developer to modify the Site by adding, deleting or changing text, images, links, or documents on any page (an "Update"). 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 has declined a Maintenance Plan and agrees to pay Developer a one-time fee for Maintenance Services for each requested Update and pages or content added to or deleted from the Site.
   3.3 If Maintenance Services are requested for an existing Site that was not created by Developer, Client agrees to grant Developer full access to Client's web space to provide such Maintenance Services as Client may request and to pay Developer a one-time fee to evaluate and index the Site.
   3.4 Client acknowledges that additional fees may apply if Client or an agent other than Developer has made or attempted to make changes to any pages on a Site created or maintained by Developer.

4. **Performance of Services.**
   4.1 Timing.
       (a) Design Services are performed according to the process described in Attachment 2. Developer and Client agree to work together to complete the Site in a timely manner, generally within 60 to 90 days after Initial Consultation depending on the size and complexity of the Site**.**
           (i) Client will provide Client Content to Developer generally within 15 days after Initial Consultation. All Client Content must be provided to Developer before Site Build will begin.
           (ii) Developer will submit work product to Client for evaluation at each stage of the process. Client will accept the work product or provide corrections and comments within 5 days of receipt. The next stage of the process will not begin until this occurs.
           (iii) Client acknowledges that additional charges may apply if Client requests substantial revisions to the Site design after Client has accepted Developer's work product at each stage of the process.
       (b) Maintenance services are performed according to an abbreviated process and Updates generally will be completed within 10 days after Developer receives the new or revised Client Content. Substantially changed page content and pages added to or deleted from the Site generally will be completed within 20 to 30 days after Developer receives the new or revised Client Content, depending on the size and complexity of the changes requested.

(c) Developer will use reasonable efforts to meet timing commitments for Developer work product. Client acknowledges that timely delivery by Client of Client Content, timely evaluation by Client of Developer work product, scheduling conflicts, work for Developer's other clients, and causes beyond Developer's reasonable control may delay completion of the Site.

4.2 Design and Maintenance Services provided under this Agreement will be performed in a workmanlike manner and meet reasonable commercial standards. Developer shall have the sole right to control and direct the means, manner and method by which services will be performed, including the use of subcontractors, and to perform such services at any place or location and at such times as Developer may determine.

4.3 Developer will correct minor bugs, defects or errors in Developer Content at no charge to Client during the Term of this Agreement, but Developer shall have no obligation to otherwise support or maintain the Site, except as part of a Maintenance Plan.

4.4 Hosting Services provided under this Agreement will meet reasonable commercial standards for availability, response time, and security. Client acknowledges that Hosting Services may be interrupted from time-to-time for scheduled maintenance or due to causes beyond Developer's reasonable control. Client shall not be entitled to any refund or proration of fees for minor interruptions.

5. **Fees and Expenses.** Fees for services provided under this Agreement are set forth in the price list for such services currently in effect and included as Attachment 1. Developer expressly reserves the right to change its fees at any time with forty-five (45) days written notice to Client, and Client shall be deemed to have accepted the new fees if Client does not give notice of termination as provided in Section 7.

5.1 **Payment of Design Fees.** Fees are due and payable upon completion and acceptance of Site by Client.

5.2 **Payment of Hosting Fees.** One-time fees are due and payable upon completion and acceptance of Site by Client. Monthly fees are due and payable quarterly in advance.

5.3 **Payment of Maintenance and Other Fees.** One-time fees for are due and payable upon completion and acceptance by Client. Monthly fees are due and payable quarterly in advance.

5.4 **Developer Expenses.**
(a) Fees for services provided under this Agreement generally are inclusive. Developer will furnish all equipment and materials and, except as otherwise provided herein, is responsible for all ordinary and necessary expenses of its staff and subcontractors incurred while performing such services.
(b) In limited circumstances, Client may be requested in advance to reimburse Developer for reasonable out-of-pocket expenses incurred in providing services under this Agreement:
(i) travel expenses other than normal commuting, including roundtrip coach airfare ("Y" class), lodging, meals, rental cars, ground transportation, parking, mileage (at the IRS rate for business miles), tolls, and tips;
(ii) communications charges; and
(iii) other expenses resulting from the services provided under this Agreement.
(iv) Developer will submit to Client an itemized statement of such expenses. Client shall pay Developer within ten (10) days from the date of each statement.
(c) Fees for services provided under this Agreement do not include any applicable taxes or tariffs.

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

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned on the   day of   , 20   .

FOR DEVELOPER: **CLIENT:**

_____   _____

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

6. Definitions.

6.1 "Site" means a series of linked web pages under common control and constituting a web site accessed via the Internet.

6.2 "Client Content" means all images, text, graphics, video, sound and other content provided by Client to Developer.

6.3 "Developer Content" means all data, code, graphics, and designs created or licensed by Developer for use in the Site, including without limitation HTML, Java and ActiveX code, applets, widgets, forms, menus and toolbars.

7. Term and Termination of Agreement.

7.1 **Term.** This Agreement commences on the date it is executed and shall continue until terminated by either party.

7.2 **Termination for Convenience.** Either party may terminate this Agreement for its convenience upon thirty (30) days' prior written notice to the other party.

(a) If for Design Services, Client shall return all Developer work product and Developer shall return all Client Content. Any licenses granted hereunder shall terminate.

(b) If for Hosting Services, Developer shall cooperate with Client in transferring the domain name registration and the Site to a new hosting provider. If termination is by Client, Client agrees to pay Developer's costs to transfer the domain name and a fee to transfer the Site; if by Developer, there will no charge to Client for the transfer.

(c) Monthly fees paid in advance by Client will be prorated to the date of termination and any overpayment refunded to Client within thirty (30) days of the date of termination.

7.3 **Termination for Cause.** Except as otherwise provided herein, either party may terminate this Agreement upon the material default or breach of any obligation by the other party if such default or breach remains uncured for thirty (30) days after written notice is sent to the other party. If Developer terminates this Agreement, all of the following shall apply:

(a) All amounts payable or accrued to Developer under this Agreement shall become immediately due and payable. Client shall not be entitled to any refund or proration of monthly or other fees paid in advance.

(b) All rights and licenses granted to Client under this Agreement shall immediately terminate.

(c) Client shall immediately cease use of Site and Developer Content, deliver to Developer all copies of Developer Content and other work product, and remove the Site and Developer Content from host's web space.

8. Ownership of Content

8.1 **Site.** Developer owns the copyright in the compilation of the Site as a collective work and in any derivative copyrights. Upon payment of Design Fees due under this Agreement, Developer grants to Client a limited, non-exclusive, non-transferable, royalty-free license, subject to the following permitted uses and restrictions:

(a) Client may use the Site on one (1) web space.

(b) Client may modify and republish the Site.

(c) Client may not sell, reproduce, or distribute the Site to third parties, or allow another person to sell, reproduce, or distribute the Site, in any form or by any means.

(d) Client may not remove any copyright or other proprietary notices or permit a third party to remove such notices.

8.2 **Client Content.** Developer acknowledges that Client retains all rights, title and interest, including any copyrights and other intellectual property rights, in Client Content.

8.3 **Developer Content.** Client acknowledges that Developer owns or holds licenses to use the Developer Content and retains all rights, title and interest, including any copyrights and other intellectual property rights, in Developer Content. Developer Content may not be sold, reproduced or distributed in any form or by any means.

9. No Exclusive Rights.

9.1 Developer uses common layouts, templates, menus, forms, graphics and other page or site elements across its designs and Client has no exclusive rights to such elements or designs. Client acknowledges the Site may be similar in appearance and function to other sites built by Developer.

9.2 Developer has the right to perform similar services for other parties and neither Developer, Developer's staff nor subcontractors shall be required to devote themselves full-time to performing services covered by this Agreement.

10. Web Site Credits and Links. Developer may state in the Site that Developer created it, place hypertext links in Client's Site to Developer's web site, and place hypertext links on Developer's web site to Client's Site as an example of Developer's services.

11. Acceptable Use Policy. Client agrees to use Hosting Services in compliance with applicable law and Developer's Acceptable Use Policy, which is included as Attachment 3.

12. Client's Representations. Client represents and unconditionally warrants to Developer that:

12.1 Client's use of the Site and Client Content 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;

12.2 Client owns the Client Content or has or will obtain all necessary and appropriate rights, permissions and licenses for Developer to place the Client Content on the Site; and

12.3 Client has or will obtain any authorization(s) necessary for hypertext links from the Site to any other third-party sites.

13. DEVELOPER'S WARRANTIES AND REPRESENTATIONS.

13.1 DEVELOPER DOES NOT WARRANT THAT:

(a) THE SITE WILL MEET CLIENT'S REQUIREMENTS;

(b) THE SITE'S OPERATION WILL BE CONTINUAL, UNINTERRUPTED OR ERROR FREE;

(c) THE SITE WILL DISPLAY AS INTENDED ON ALL WEB BROWSER VERSIONS OR USER COMPUTERS;

(d) THERE WILL BE NO UNAUTHORIZED ACCESS TO THE SITE OR ANY DATA ON THE SITE; OR

(e) SEARCH ENGINES WILL INDEX THE SITE OR THE SITE WILL RECEIVE A SPECIFIC SEARCH RANKING.

13.2 THE DEVELOPER CONTENT FURNISHED UNDER THIS AGREEMENT 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.

13.3 CLIENT ACKNOWLEDGES THAT THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE FEES CHARGED.

13.4 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 AGREEMENT DOES NOT INFRINGE ANY COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

14. LIMITATION OF DEVELOPER'S LIABILITY.

14.1 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.

14.2 DEVELOPER SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE SITE OR CLIENT CONTENT THROUGH ACCIDENTAL, FRAUDULENT OR

UNAUTHORIZED MEANS OR DEVICES.
14.3 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.
14.4 CLIENT ACKNOWLEDGES THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND IN THEIR ABSENCE DEVELOPER WOULD NOT ENTER INTO THIS AGREEMENT.

15. **INDEMNIFICATION.**
15.1 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) BREACH OF CLIENT'S REPRESENTATIONS CONTAINED IN THIS AGREEMENT;
   (b) NEGLIGENCE OR WILLFUL MISCONDUCT OF CLIENT;
   (c) 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.
15.2 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.
15.3 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.

16. **General Provisions.**
16.1 **Independent Contractor.** Developer is an independent contractor for all purposes of this Agreement, and no employee-employer relationship is intended or created by this Agreement. Client shall not withhold from Developer's fees any taxes or other amounts that would normally be withheld from an employee's compensation.
16.2 **No Agency.** Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties. Neither party shall have the power to obligate or bind the other party.
16.3 **Compliance with Laws.** Each Party agrees that its performance under this Agreement shall in all respects conform to any applicable international, national and local laws, rules and regulations governing the Site, electronic commerce and the export of technical information.
16.4 **Taxes and Tariffs.** Client is solely responsible for any federal, state or local sales, use, property or value added taxes or tariffs based on the services provided under this Agreement. Client shall hold harmless, protect, and defend Developer from any such taxes or tariffs and any claim, suit, penalty or fine arising therefrom.
16.5 **Payments.** All payments shall be made in U.S. Dollars. Client shall notify Developer on a timely basis of changes to billing information. Fees not disputed within thirty (30) days of due date are conclusively deemed accurate.
16.6 **Late Fees.** Late payments by Client will be subject to a service charge of 1.5% per month, and a $30 service charge will be assessed for returned checks. Client shall pay reasonable attorney's fees and other expenses necessitated by non-payment.
16.7 **Complete Agreement.** This Agreement, 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 Agreement and any Attachments, the Agreement shall take precedence.
16.8 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
16.9 **Headings.** Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.
16.10 **Modification.** Amendments and supplements to this Agreement, including any Attachment hereto, shall be enforceable only if in writing and signed by both parties.
16.11 **Notices.** All notices and other communications given in connection with this Agreement shall be in writing delivered in person, by postal mail, or by overnight courier to the address that follows a party's signature or to another address that a party designates in writing. Such notice shall be deemed given upon personal delivery or, if sent by postal mail, 5 days after the date of mailing.
16.12 **Survival.** The provisions of Sections 8 and 12 through 15 shall survive any termination of this Agreement.
16.13 **Force Majeure.** A party is not liable for failure to perform its obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout, or interruption or failure of electricity or telecommunications service.
16.14 **Enforceability.** If one party waives any term or provision of this Agreement, that waiver shall be effective only for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its rights or remedies under this Agreement, that party retains the right later to enforce that term or provision.
16.15 **Disputes.** If a dispute arises, the parties shall try in good faith to settle it through mediation conducted by a mediator to be mutually selected. The parties shall share the costs of the mediator equally. Each party shall cooperate fully and fairly with the mediator and shall attempt to reach a mutually satisfactory resolution of the dispute. If the dispute is not resolved within 60 days after it is referred to a mediator, either party may pursue litigation. In the event of litigation, the prevailing party shall be entitled to recovery of its reasonable attorney fees and other legal expenses incurred.
16.16 **Assignment and Successors.** The rights and obligations under this Agreement are freely assignable by either party. Client shall retain the obligation to pay if the assignee fails to pay as required by this Agreement. This agreement binds and benefits the heirs, successors and assigns of the parties.
16.17 **Severability.** If any court or administrative agency finds any provision of this Agreement invalid, illegal, or unenforceable in any respect, the remaining provisions shall continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either party of a breach of any provision of this Agreement shall not operate or be interpreted as a waiver of any other or subsequent breach.
16.18 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. Both parties agree that any cause of action arising under this Agreement shall be brought in a court with jurisdiction in or for Oakland County, Michigan.