

## WEB SITE DEVELOPMENT AGREEMENT

This Web Site Development Agreement is made by and between \_\_\_\_\_ ("Web Designer"), with its principal place of business at \_\_\_\_\_ and \_\_\_\_\_ ("Customer") with its principal place of business at \_\_\_\_\_.

WHEREAS, Customer desires to retain Web Designer to develop the World Wide Web site (the "Web Site") for Customer as described in the Work Plan (as defined in Section I below);

WHEREAS, Web Designer desires to undertake the development of the Web Site and agrees to do so under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**Section 1. Work Plan.** Web Designer has prepared a Work Plan for the Web Site, which includes the following:

- (a) the specifications for the Web Site which comply with the requirements of the Customer's Request For Proposal;
- (b) a listing of all items to be delivered to Customer (the "Deliverables");
- (c) a schedule containing a delivery date for each Deliverable; and
- (d) a schedule setting forth the amount and timing of Web Designer's compensation, including provisions for payment of Web Designer's reasonable travel and other out-of-pocket expenses.

Web Designer shall deliver the Work Plan to Customer with this Agreement. Customer shall have five (5) days to review and comment upon the Work Plan. Upon approval of the Work Plan by Customer, it will be attached as Exhibit "A" and will become a part of this Agreement. Web Designer shall immediately commence development of the Web Site in conformity to the Work Plan.

**Section 2. Payment.** The total contract price for the Web Site shall be as set forth in the Work Plan and shall be payable in installments according to the payment schedule set forth therein. Each installment shall be payable upon completion of each project phase by Web Designer and acceptance by Customer.

**Section 3. Changes in Project Scope.** If at any time following acceptance of the Work Plan, Customer should desire to change the specifications or other elements of the Work Plan, Customer shall submit to Web Designer a written proposal specifying such changes. Web Designer shall evaluate each such proposal and shall submit to Customer a written response within five (5) working days following receipt thereof. Web Designer's response shall include a statement of the availability of personnel and

resources, as well as the effect the proposed changes will have on the price, delivery dates or warranty provisions of this Agreement.

Any changes to the Work Plan shall be evidenced by a "Work Plan Amendment." The Work Plan Amendment shall be signed by authorized representatives of Web Designer and Customer, and shall be deemed a part of this Agreement. If Web Designer does not approve the Work Plan Amendment, he shall not be obligated to perform any additional services hereunder.

**Section 4. Delays.** Web Designer recognizes and agrees that failure to deliver the Web Site according to the Work Plan's delivery schedule will result in expense and damage to Customer. Web Designer shall inform Customer immediately of any anticipated delays in the delivery schedule and of the actions being taken to assure completion of the Web Site within such schedule. If any delivery date is missed, Customer may, at its sole option, declare a default under this Agreement and may pursue all remedies set forth in Section 14; provided, however, that Customer shall provide Web Designer with thirty (30) days to cure the delay prior to declaring a default. Customer may not declare a default hereunder if such delay is caused by any action or failure to act of Customer.

The Web Designer cannot be held in default of this Agreement in case of delays on the part of the Customer. In such case, the Web Designer will provide the Customer with written notice that such a delay has occurred. Work on the Web Site shall not resume until the reason for the delay has been resolved by the Customer and notice of its resolution has been provided to the Web Designer.

**Section 5. Acceptance Testing.** Upon completion of the Web Site and the delivery of all items required to be provided under the Work Plan, Customer shall have thirty (30) days from such completion to inspect, test and evaluate the Web Site to determine whether it satisfies the acceptance criteria set forth in the Work Plan.

If the Web Site does not satisfy the acceptance criteria, Customer shall give Web Designer written notice stating why the Web Site is unacceptable. Web Designer shall have twelve (12) days from the receipt of such notice to correct the deficiencies. Customer shall then have twelve (12) days to inspect, test and reevaluate the Web Site. If the Web Site still does not satisfy the acceptance criteria, Customer shall have the option of either: (1) repeating the procedures set forth above, or (2) terminating this Agreement pursuant to Section 13.

If and when the acceptance tests establish that the Web Site complies with the acceptance criteria, Customer shall notify Web Designer that it accepts the Web Site. The date of such notification shall be the date on which Customer shall be obligated to make the final payment specified in the schedule set forth in the Work Plan.

**Section 6. Authority.** Web Designer and Customer each hereby represent and warrant that the execution, delivery and performance of this Agreement has been duly authorized and that the Agreement is a legal, valid and binding agreement of Web Designer and Customer, enforceable in accordance with its terms. Web Designer and Customer further represent that this Agreement does not breach or violate any agreement to which it is a party or to which it is bound.

**Section 7. Rights to Work Product.** Web Designer hereby acknowledges that the Deliverables and any other documentation, materials or intellectual property hereunder (collectively, the "Work Product") are works which have been specially commissioned by Customer and are "work made for hire" for Customer and Customer shall own all right, title, and interest therein. Customer shall be considered the author of the Work Product for purposes of copyright and shall own all the rights in and to the copyright of the Work Product and, as between Customer and Web Designer, only Customer shall have the right to obtain a copyright registration on the same which Customer may do in its name, its trade name or the name of its nominee(s). Accordingly, among other things, Customer is the author and owner of the Work Product and shall have the sole and exclusive rights to do and authorize any and all of the acts set forth in Section 106 of the Copyright Act with respect to the Work Product and any derivatives thereof, and to secure any and all renewals and extensions of such copyrights. To the extent Web Designer does not own such Work Product as a work made for hire, Web Designer hereby assigns, transfers, releases and conveys to Customer all rights, title and interest to such Work Product, including but not limited to all other patent rights, copyrights, and trade secret rights. Web Site will be built on customer's server, on customer's hosting account, throughout the entire development process; unless an otherwise mutually agreed upon course of action must be take to remedy an event preventing from this course of action so as to ensure the timeliness of the "Work Plan."

**Section 8. Training.** Web Designer shall provide no training in the use of the Web Site. Limited support via phone or e-mail will be available to Customer for 30 days following acceptance of the Web Site, as set forth in Section 5. "Limited support" shall include instructions to access, alter, and maintain the Web Site using software and/or technology purchased by Customer. Web Designer is not responsible to for providing software and/or technology to Customer.

**Section 9. Representations and Warranties.**

- (a) **Warranty of Web Site Performance:** Web Designer represents and warrants that, for sixty (60) days following acceptance of the Web Site by Customer, the Web Site will be free from programming errors and defects in workmanship and materials, and will conform to the specifications in the Work Plan. If programming errors or other defects are discovered during the warranty period, Web Designer shall promptly remedy them at his expense.
- (b) **Warranty of Title:** Web Designer represents and warrants that he owns and has the complete right to license, convey title without any encumbrances to the Web Site and Deliverables covered by this Agreement. Web Designer further represents and warrants that he has obtained all required registrations, permissions and consents from all third parties necessary to deliver the Web Site, Background Technology and Deliverables. Web Designer shall not grant any rights or licenses to any intellectual property or technology that would conflict with his obligations or Web Designer's rights under this Agreement.
- (c) **Warranty Against Disablement:** Web Designer expressly represents and warrants that no portion of the Web Site contains or will contain any protection feature

designed to prevent its use. This includes, without limitation, any computer virus, worm, software lock, drop dead device, Trojanhorse routine, trap door, time bomb or any other codes or instructions that may be used to access, modify, delete, damage or disable the Web Site or computer system.

- (d) **Warranty of Compatibility:** Web Designer represents and warrants that the Web Site shall be compatible with Customer's hardware and software as set forth in the specifications in the Work Plan. Web Designer will also build the Web Site to generally accepted professional development standards.
- (e) **Warranty Against Intellectual Property Infringement:** Web Designer represents and warrants that the Web Site and Deliverables shall not infringe on the trademark, copyright, patent, trade secrets or any other rights of any third party. To the extent the Web Site or the Deliverables infringe upon the rights of any third party, Web Designer shall obtain a license or consent from such third party permitting the use of the Web Site and Deliverables.

## **Section 10. Indemnity.**

- (a) **Indemnification Against Liability for Infringement:** Web Designer shall indemnify Customer and any of its officers, directors, employees or agents against all claims, liabilities, costs, damages, fees and expenses (including reasonable attorney fees) arising from any breach or alleged breach of warranty under this Agreement or any claim or suit alleging infringement by the Web Site, Background Technology or Deliverables of any patent, copyright, trade secret or trademark rights or any other rights of any third party. Customer shall promptly notify Web Designer in writing of any third party claim or suit and Web Designer shall have sole control of the defense of any such action and all negotiations for its settlement or compromise. Customer may participate at its own expense in the defense of any such action at its sole discretion.
- (b) **Indemnity by Customer:** Customer shall indemnify Web Designer and any of its employees or agents against all claims, liabilities, costs, damages, fees and expenses (including reasonable attorney's fees) arising from any action based upon any content on the Web Site that is solely provided by Customer.

## **Section 11. Confidentiality.**

- (a) **Confidential Information:** For purposes of this Agreement, the term "Confidential Information" means all information that is not generally known by the public and that: (i) is obtained by Web Designer from Customer, or that is learned, discovered, developed, conceived, originated, or prepared by Web Designer during the process of performing this Agreement, and (ii) relates directly to the business or assets of Customer. The term "Confidential Information" shall include, but shall not be limited to: inventions, discoveries, trade secrets, and knowhow; computer software code, designs, routines, algorithms, and structures; product information; research

and development information; lists of clients and other information relating thereto; financial data and information; business plans and processes; and any other information of Customer that Customer informs Web Designer, or that Web Designer should know by virtue of its position, is to be kept confidential.

- (b) **Obligation of Confidentiality:** During the term of this Agreement, and at all times thereafter, Web Designer agrees that he will not disclose to others, use for his own benefit or for the benefit of anyone other than Customer, or otherwise appropriate or copy, any Confidential Information, whether or not developed by Web Designer, except as required in the performance of its obligations to Customer hereunder. The obligations of Web Designer under this paragraph shall not apply to any information that becomes public knowledge through no fault of Web Designer.

**Section 12. Term of Agreement.** This Agreement commences on the date it is executed and shall continue until full performance by both parties, or until earlier terminated by one party under the terms of this Agreement.

**Section 13. Termination of Agreement.** This Agreement may be terminated by Customer at its sole election upon thirty (30) days prior written notice to Web Designer. Upon such termination, all amounts owed to Web Designer under this Agreement for completed work in accordance with the Work Plan shall become due and payable. At such time, Web Designer shall deliver all completed work to Customer.

If this Agreement is terminated by Customer because of Web Designer's default of his obligations hereunder, Customer may, after thirty (30) days written notice to Web Designer and a reasonable opportunity to cure:

- (a) require Web Designer to immediately deliver to Customer all Work Product developed by Web Designer under this Agreement and pay Web Designer all amounts owed for the work performed under this Agreement and accepted by Customer, whereupon Customer shall have complete right, title and interest in such work and all rights, permissions and licenses granted to Customer by Web Designer under this Agreement shall continue, in perpetuity as royaltyfree and fully paid rights; or
- (b) pursue all legal and equitable remedies against Web Designer.

If Web Designer terminates this Agreement because of Customer's default, after a thirty (30) day written notice to Customer and an opportunity to cure, Web Designer may require:

- (a) Customer to pay all amounts then due to Web Designer under this Agreement for any work which has been completed and accepted by Customer, whereupon Customer shall have complete right, title and interest in such work and all rights and licenses granted to Customer by Web Designer under this Agreement shall survive as royalty free and fully paid-up; and

- (b) pursue all legal and equitable remedies against Customer.

**Section 14. Assignment.** Neither party may assign or subcontract its rights or obligations under this Agreement without the prior written consent of the other party.

**Section 15. Location of Web Site.** Web Designer shall provide all HTML files and code to Customer or its assigns. Web Designer shall use his best good faith efforts to assist Customer in the installation of the Web Site to its final location in a timely and efficient manner. Web Designer shall also use his best good faith effort to assist the Customer in relocation of the Web Site if such relocation should occur within the Warranty period as defined in Section 9, paragraph (a).

**Section 16. General Provisions.**

- (a) **Complete Agreement:** This Agreement together with all exhibits, appendices or other attachments, is the sole and entire Agreement between the parties relating to the subject matter hereof. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of this Agreement and any attached exhibits, appendices or other materials, this Agreement shall take precedence.
- (b) **Modification to Agreement:** Modifications and amendments to this Agreement shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.
- (c) **Waive:** No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.
- (d) **No Agency:** Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- (e) **Independent Contractor:** The parties acknowledge that Web Designer shall perform his obligations hereunder as an independent contractor. The manner and method of performing such obligations will be under Web Designer's sole control and discretion. Web Designer's sole interest is in the result of such services. It is also expressly understood that Web Designer's employees and agents, if any, are not Customer's employees or agents, and have no authority to bind Customer by contract or otherwise. Customer shall make no deduction from any payments due Web Designer hereunder for federal and state tax purposes. In the event that Customer is found liable for Social Security, withholding, insurance, or other such taxes, Customer shall have the right to immediately recover such amount from Web Designer.

- (f) Notice: All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given when delivered personally, or five (5) days after being deposited in the United States mail, postage prepaid and addressed as follows, or to such other address as each party may designate in writing:

Web Designer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

- (g) Reasonable Costs: In the event of any controversy concerning or related to this Agreement or the performance of this agreement, the prevailing party shall be entitled to recover its reasonable expenses (including reasonable attorneys' fees) incurred in resolving such controversy, in addition to any other relief that may be available.

- (h) Applicable Law: This Agreement will be governed by the laws of the State of New York. Any litigation or arbitration regarding this Agreement shall be brought exclusively in New York, NY.

- (i) Severability: If any provision of this Agreement is held invalid, void or unenforceable under any applicable statute or rule of law, it shall to that extent be deemed omitted, and the balance of this Agreement shall be enforceable in accordance with its terms.

- (j) Time of the Essence. Time is of the essence in the performance of the covenants of the parties hereunder, including without limitation delivery covenants to be performed by the Web Designer.

- (k) Bankruptcy. If either party hereto (a) shall be adjudicated a bankrupt or an order appointing a receiver of it or of the major part of its property shall be made, or an order shall be made approving a petition or answer seeking its reorganization under any applicable bankruptcy law, and in any such case shall not be stayed within 10 days, or (b) shall institute proceedings for a voluntary bankruptcy or apply for or consent to the appointment of a receiver of itself or its property, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, for the purpose of seeking a reorganization under the federal bankruptcy laws or otherwise, then in any one or more of such events listed in (a) or (b) above, the other party may terminate this agreement by giving at least 10 days prior notice.

Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

By signing below I, the party represented, throughout this agreement ensure that I have reviewed and approved of the Schedule of Deliverables, and all included documentation for clarification of design aesthetics.

WEB DESIGNER:

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By: \_\_\_\_\_  
Its: \_\_\_\_\_

CUSTOMER:

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By: \_\_\_\_\_  
Its: \_\_\_\_\_