

WEBSITE DESIGN & DEVELOPMENT AGREEMENT

This Website Design and Development Agreement (hereinafter referred to as the "Agreement") is entered into as of [DATE] (hereinafter referred to as the "Effective Date") by and between [DESIGN COMPANY NAME] (hereinafter referred to as the "Developer") with its principal place of business located at [DESIGN COMPANY ADDRESS] and [CLIENT'S NAME] (hereinafter referred to as the "Client") with its principal place of business located at [CLIENT'S ADDRESS], each a "Party" and collectively the "Parties".

RECITALS

WHEREAS, the Developer is in the business of designing, developing, and/or improving World Wide websites and has experience in the industry; and

WHEREAS, the Client has engaged the services of the Developer as an independent contractor to create a website for Internet domain name [WEBSITE URL], which shall be the URL the website will be located at, to which the Client is the current registered owner, to meet the specifications outlined in Exhibit A and authorizes the Developer to make said website available through the Internet and publicize the same to web search engines, directories, and other indexes, all as set out in this Agreement.

NOW THEREFORE, in consideration of the covenants, representations and warranties set out herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and Client agree as follows:

1. DESIGN OF WEBSITE

- 1.1 **Acquisition of Developer.** The Developer will provide consultation and design services to the Client for the creation, development, and/or modification to a website. Client has engaged Developer to create, design, test, and deliver a complete website design in the form of HTML and/or Flash, latest available version, depending on the type of design requested, to meet the specifications as outlined in Exhibit A and elsewhere herein.
- 1.2 **Additional Services.** If the Client desires any additional services, work to be performed, or products and/or software other than those specifically articulated in Exhibit A, then Client agrees that Developer shall quote Client separately for the provision of said services, work, and/or materials. If Client accepts the quote from Developer for such supplemental work, additional services, and/or products and software, Client agrees that the development of these materials will be performed under the terms of this Agreement and agrees that all provisions of this Agreement regarding the same shall apply.
- 1.3 **Client's Delivery of Project Materials.** The Client will deliver all materials to be included in the creation, development, and/or modification to the website Developer has been acquired to perform work on in formats mutually agreed upon by both parties within [DAYS] of Client's acceptance of the terms of this Agreement and project scope, along with Client's remittance to begin the same in accordance with Section 2.3 of this Agreement. The project materials shall include all content Client would like incorporated in the website, including, but not limited to, text, graphics, logos, sound files, photographs, video files, as well as all examples, descriptions, color specifications and the like, as identified in Exhibit B and referred to as "Website Content".
- 1.4 **Developer Created Materials.** Developer agrees that the work to be performed by Developer for Client will be substantially similar to the specifications articulated in Exhibit A and elsewhere within this Agreement. Any deviation from this explicit outline, other than those necessary as part of the creative process of developing Client's website, must be approved in writing by Client. Further, for any Website Content Developer is contracted to create and incorporate into Client's website as outlined in Exhibit A of this Agreement, Client

agrees that Developer may utilize the services of subcontractors as Developer desires.

1.5 **Delivery Timeline and Format.** Developer agrees to make all reasonable efforts to deliver the first mock-up(s) of Client's project within [X] days of Developer's receipt of Client's Website Content and payment via [SPECIFY FORMAT (i.e. jpgs, upload to password protected workspace, upload to Client's existing web space, zip file, etc.)]. Client shall then provide any and all feedback within [X] days to Developer to modify said mock-up(s). Developer shall then have [X] days to complete said modifications and return a revised mock-up(s) to Client. This format of review of and revision shall subsist for a total of [NUMBER OF MODIFICATIONS] modifications. If Client requires any modifications beyond this included number of modifications, Client may be required to remit an additional fee to Developer for completion of the same, or Developer shall complete the requested modifications as otherwise agreed to by the Parties. However, Client agrees that any deviation from the project specifications outlined in Exhibit A that Client may request or Client's delay in performing its responsibilities under the terms of this Agreement will impact the delivery timeline for Client's first mock-up and any revised mock-ups and the completed project package thereafter.

1.6 **Reporting and Meetings.** Client agrees that if another party shall be responsible for providing feedback to Developer on the development of Client's website throughout the creation process to make said party available to Developer when reasonably required and provide all contact details to effectuate such communication and discuss the progress of said services as being provided by and/or as delivered from Developer. Client agrees that said party shall be bound to the same review and testing requirements as articulated in Sections 1.5 and 1.8 of this Agreement.

1.7 **Hidden Code or Text.** Developer agrees not to include any hidden text or code into Client's website other than that specifically requested by Client.

1.8 **Acceptance and Correction Period.** Client shall have a period of [X] days after the delivery of Client's completed project by Developer to review and test the final materials and return any defects, errors, or omissions to the Developer within [X] days of Developer's delivery of the completed project. Developer shall then review any notification provided by Client and the Parties shall confirm whether these changes fall within the parameters of the original project specifications articulated in Exhibit A. If said changes are agreed to be part of the original requirements outlined in Exhibit A and elsewhere within this Agreement, Developer shall have [X] days to complete Client's provided corrections and modifications and deliver the revised completed project package. Client shall then have [X] days to review and test Developer's revised completed package and return any defects, errors, or omissions to Developer within [X] days. Developer shall then have [X] days to complete Client's provided corrections and modifications and deliver the revised completed package to Client. This process shall continue until such time as Client provides final acceptance to Developer or if Client fails to return any feedback to Developer within [X] days of Developer delivering the final completed project to Client, Client shall be deemed to have accepted the project in all respects.

1.9 **Website Backup/Archive.** Developer agrees to retain a complete backup of Client's website as developed by Developer for a period of [X] days following Client's final acceptance of the completed project.

2. DEVELOPER COMPENSATION AND FEES.

2.1 **Estimates.** Any cost estimates Developer provides to Client are estimates only, except as otherwise specifically stated as a fixed price quote in Exhibit C of this Agreement or elsewhere herein.

2.2 **Payment Terms.** In consideration of the services to be performed and website to be

developed and delivered by Developer, Client agrees to pay Developer the total project price of [AMOUNT], which shall be payable to Developer as set forth in Section 2.3 of this Agreement, identified as Payment Schedule accordingly.

2.3 **Payment Schedule.** Upon execution of this Agreement, Client shall remit payment to Developer in accordance with the payment schedule set forth and attached hereto in Exhibit C of this Agreement. If Developer and Client have agreed that payment shall be remitted in stages, Developer shall have the responsibility to notify Client each time that a stage has been reached, deliver all materials that correspond to that stage of development, and invoice the Client for the amount due at that stage in accordance with the schedule set forth in Exhibit C. Client shall then remit payment within [X] days of receiving said invoice from Developer. If Client does not remit payment within the time period outlined, Developer may stop any further development on Client's project. Further, Client agrees that once the project commences no credit or refund shall be granted and, if Client fails to remit payment at any stage Client shall forfeit all monies paid up to that stage and Developer may withhold the provision of any project materials developed up to that point until such time as Client satisfies its monetary obligations to Developer. Alternatively, Client and Developer may agree that failure to remit payment within [X] days of receiving Developer's invoice will result in the accrual of interest at a rate of [INTEREST RATE %], which will be required to remitted with any outstanding balance at any stage in order to continue with the development of Client's website.

2.4 **Supplemental Expenses.** The Parties acknowledge and agree that any and all expenses directly connected to the development process shall be absorbed by Developer as part of the total project price quoted to Client by Developer, which shall include, but not be limited to, cost of purchasing graphics, photographs, sound files, software procurement, subcontractor fees, licensing fees, other web content, materials, supplies, and all other elements as may be needed to develop Client's website. However, Client shall be responsible for any and all fees not associated with the creation, development, and/or modification to Client's website, such as web hosting, programming services, domain name registration, marketing and advertising services, search engine optimization, or any other service not specifically articulated within this Agreement.

2.5 **Acceptable Payment Types:** All invoices must be remitted in U.S. Dollars and may be paid via credit card, PayPal, money order, certified cashier's check, or direct bank wire transfer.

- (i) Payments remitted by certified check or money order should be made payable and sent to:

[DEVELOPER'S NAME]
[DEVELOPER'S STREET ADDRESS]
[DEVELOPER'S CITY, STATE & ZIP]
- (ii) Payments remitted by bank wire transfer should be remitted to:

[ENTER DOMESTIC TRANSFER INSTRUCTIONS]:

OR

[ENTER INTERNATIONAL TRANSFER INSTRUCTIONS]:

3. DEVELOPER PROMOTION AND PUBLICITY.

3.1 **Developer Acknowledgment.** Upon Developer's delivery of Client's final project package, Client agrees to include a credit to Developer within the footer of the website created by Developer in a form and content acceptable to Client, which shall include a hyperlink to Developer's website, for a period of [X] days after Client launches its website created by Developer in whole or substantial part.

3.2 **Developer's Portfolio.** Upon Developer's delivery of Client's final project package, Client agrees that Developer may list the Client's name and website within Developer's portfolio, and any marketing and advertising campaigns Developer may engage in, unless otherwise expressly prohibited in this Agreement as agreed to by the Parties. Said listing of Client's website shall include a hyperlink to Client's website and Client shall have full discretion and approval as to the form and content of such acknowledgment and the appearance of the link.

4. CONFIDENTIALITY.

4.1 **Confidential Information.** Each Party further recognizes and acknowledges that the other Party possesses certain confidential information that constitutes a valuable, special, and unique asset. As used herein, the term "Confidential Information" includes all information and materials belonging to, used by, or in the possession of the Disclosing Party relating to its products, processes, services, technology, inventions, patents, ideas, contracts, financial information, developments, business strategies, pricing, current and prospective customers, marketing plans, and trade secrets of every kind and character, but shall not include (a) information that was already within the public domain at the time the information is acquired by the Receiving Party, or (b) information that subsequently becomes public through no act or omission of the Receiving Party. The Receiving Party agrees that all of the Confidential Information is and shall continue to be the exclusive property of the Disclosing Party, whether or not prepared in whole or in part by the Receiving Party and whether or not disclosed to or entrusted to the Receiving Party's custody. The Receiving Party agrees that it shall not, at any time following the execution of this Agreement, use or disclose in any manner any Confidential Information of the Disclosing Party, except as set forth in this Section 4.1 or in this Agreement. Except as otherwise expressly set forth in this Agreement, the parties shall not disclose the terms of this Agreement or relationships to any third party other than a party's advisors, lawyers, accountants, parent company, wholly-owned subsidiaries and owners.

4.2 **Confidential Information Retention and Disclosure.** Each Party will maintain all confidential information of the other party in strict confidence and will not, at any time or for any reason, disclose any Confidential Information of the other to any third party without the disclosing party's prior written consent. Neither party will use any Confidential Information of the other for any purpose whatsoever except in performing its duties and exercising its rights under this Agreement. Neither party will disclose any Confidential Information of the other to any of its agents or employees who do not participate directly in the performance of its duties or exercise of its rights under this Agreement, and each party will advise its employees who are permitted access to any Confidential Information of the other party, of the restrictions on disclosure and use set forth in this Agreement. Notwithstanding the foregoing, either party may disclose the Confidential Information of the other if it believes in good faith that any applicable law, rule, or regulation requires the disclosure, provided that it makes a reasonable effort to give the disclosing party as much advance notice as may be practicable to enable the owner of the Confidential Information to file an injunction or restraining order prohibiting disclosure. On termination or expiration of this Agreement, each party will return or destroy all Confidential Information obtained from the other party and copies thereof.

Either party may use for any purpose without obligation to the other party's information (other than Confidential Information) in non-tangible form, which may be recalled by persons who have had access to the Confidential Information, and which results from work with the Confidential Information. The Parties agrees that any breach of this Section 4 would cause irreparable harm to the Disclosing Party for which monetary damages would not be adequate and, therefore, the Receiving Party agrees that, in the event of a breach of this Section 4, the Disclosing shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

4.3 **Confidentiality Duration.** PARTIES AGREE THAT THE TERMS OF THIS AGREEMENT AND TRANSACTION ARE TO BE CONFIDENTIAL. BOTH PARTIES AGREES TO REFRAIN FROM COMMUNICATING OR DISCLOSING THE TERMS, SPECIFICATIONS, PRICING ARRANGEMENTS, AND ANY AND ALL OTHER DETAILS LISTED HERE TO ANY PERSON, PERSONS, ASSOCIATIONS, FIRMS, OR OTHER ENTITIES WHETHER OR NOT RECOGNIZED BY NEW YORK LAW FOR THE ENTIRE PERIOD THAT THE PARTIES ARE ENGAGED IN THIS AGREEMENT, AND FOR A PERIOD OF ONE (1) YEAR AFTER ANY TERMINATION OF THIS AGREEMENT. UPON THE EXPIRATION OF THIS CONFIDENTIALITY PERIOD, BOTH PARTIES WILL REMAIN BOUND TO ALL OTHER PROVISIONS OF THIS AGREEMENT.

5. PROPRIETARY RIGHTS.

5.1 **Limited Trademark License.** The Parties hereby agree to issue the other party a non-exclusive, non-transferable, revocable license to utilize the trademark of the other Party in a form acceptable by that party for the purposes of satisfying the rights and obligations as set forth in Section 3.1 and 3.2 of this Agreement.

5.2 **Original Work.** Developer agrees that Client's website shall be a work of original creation by Developer that is developed for the sole purposes of this project, except as expressly consented to by the Client as to the inclusion of materials of a third party or as may have been created by Developer previously. Developer agrees that in such instances where third party materials or work previously created by Developer is included that they shall effectuate the acquisition of all necessary rights, titles, licenses, and interests to procure an unlimited, royalty-free, world-wide license for Client to utilize the same within its website.

5.3 **Intellectual Property Rights of the Parties.** The Parties agree that any grant authorizing either party to utilize any copyrighted or trademarked material(s) from the other party shall be conditioned on the use of said materials in accordance with the terms of this Agreement. Furthermore, both Parties agree that all right, title, interest and Intellectual Property Rights attributable to all material(s) shall remain owned solely and exclusively by that Party at all times, and shall not be deemed to have been assigned to the other Party under any circumstances. Parties shall retain ownership of all components, content and intellectual property to which that Party possessed ownership prior to the commencement of this Agreement. All rights in the Parties copyrighted and trademarked material(s), including but not limited to Confidential Information, trade secrets, trademarks, service marks, patents, and copyrights are, shall be and will remain the property of that Party. Both Parties acknowledge that the information and/or material(s) provided to the other Party to effectuate the completion of this contracted project and the terms of this Agreement contain proprietary and Confidential Information of that Party. Therefore, the Parties agree to keep said information and material(s) in confidence and to take all reasonable precautions to ensure that no unauthorized persons have access to said information or material(s) and that no unauthorized copies are made. Either Party's breach of this Section 5.3 shall be considered a material breach of this Agreement.

5.4 **Third Party Materials.** If any third party materials and Intellectual Property Rights will be

incorporated in, or used in connection with the Developer Intellectual Property, then it shall be Developer's sole responsibility to obtain from the owner thereof any rights, licenses, permissions, releases, approvals, clearances and credit or attribution information necessary to enable Developer to comply with this Agreement and to grant to Client, the rights necessary for Client to receive, use and benefit from, as applicable and permitted by this Agreement during the Term. Developer hereby grants to Client, during the Term, a world wide, nontransferable, right and license, to use, display, perform and install, store, load and execute such third party items and third party Intellectual Property Rights as necessary to fully utilize website design developed for Client by Company to the extent permitted by this Agreement.

5.5 **Open Source Materials.** Developer will identify all materials, if any, incorporated into Client's website and/or required for the Client's use of the website created for Client by Developer, that would cause any Intellectual Property or any combination thereof with other property created pursuant to this Agreement to be subject to license terms applicable to Open Source Code. To the extent that the use of any such materials by Client hereunder could subject Client to license terms applicable to Open Source Code, Developer shall ascertain the extent to which such materials are incorporated, and shall ensure that such materials do not interfere with Client's use of the website created under the terms of this Agreement or Client's Intellectual Property as permitted by this Agreement.

5.6 **Developer License of Specific Portions.** Client hereby grants to Developer a perpetual, non-exclusive, royalty free, worldwide license to use certain portions and/or content from Client's website as expressly outlined in Exhibit D of this Agreement. This license may not be transferred, sublicensed, or assigned to any other party at any time without the express written consent of Client and does not extend to Client's any subsisting copyrights or trademarks held by Client or identifying material of Client's business or business name.

5.7 **Waiver of Common Law Rights.** Developer hereby waives, assigns, and transfers onto Client, any and all rights in and to the content created for Client's website that may exist with respect to said content under any and all federal or state common law, statutory law, or otherwise, including, but not limited to, trade secret rights, privacy rights, moral rights, or any other rights thereto.

5.8 **Relation of the Parties.** Developer, [DEVELOPER COMPANY NAME], is an Independent Contractor and is not an employee, agent, or representative of Client, [CLIENT NAME]. Developer is solely and wholly responsible for all federal, state, local, and country payroll taxes and insurance that may be applicable to Developer. The Developer is retained by Client only for the purposes and to the extent set forth in this Agreement and the Developer's relationship to the Client shall, during the term of this Agreement, be that of an Independent Contractor and the arrangement constitutes that of a Work Made for Hire. Developer further agrees that under this Work for Hire Agreement Client's website created as part of this Agreement is considered to be created within the scope of this work, and Client shall be the sole owner of said website. In further words, Developer agrees that that all copyrights, trademarks, patents, intellectual properties, inchoate intellectual property interests and all rights associated to ownership, whether perfected or not, and whether aware of or not, and possession of any details related to any and all created photo(s) shall be held by Client at all times, and that Developer shall have no ownership rights to any materials created by Developer for Client except as expressly identified elsewhere in this Agreement.

Furthermore, Client shall not withhold, from sums becoming payable to the Developer hereunder, any amounts for State or Federal Income Tax, or for FICA (Social Security) Taxes, during the term of this Agreement. Developer shall be free to dispose of such portions of his

entire time, energy and skill as he is not obligated to devote hereunder to Client in such manner as he deems advisable as detailed here and in Section 6 of this Agreement. The Developer shall not be considered as having an employee status or as being entitled to participate in any plans, arrangements or distributions by the Client pertaining to or in connection with any insurance, pension, stock, bonus, profit sharing or other benefit extended to the Client's employees.

5.9 **Reservation of Rights.** Each Party reserves its respective rights in and to any Intellectual Property that is not expressly granted in this Agreement.

6. **NON-EXCLUSIVE AGREEMENT.** Developer and Client agree that this Agreement is for a non-exclusive arrangement, whereby Developer will retain the right to continue to create and sell design services and website to other clients. However, Developer agrees that any and all material(s) created solely and exclusively for Client as identified in this Agreement will be sold only to Client and to no other party at any time prior to or thereafter said sale.

7. **WARRANTIES.**

7.1 **No Liens, Encumbrances, or Infringements.** The Developer warrants that the website created as per the terms of this Agreement are now free for sale to Client, and that at the time of delivery will be free from any security interest, lien, or any third party interest in the listed work(s), and that it has full title to the created work(s) and full authority to sell the work(s). Furthermore, the Developer agrees that at the time of signing this Agreement, the Developer neither knows, nor has reason to know, of the existence of any outstanding title or claim of hostile title to the rights of the Developer in the work(s). The Developer warrants that the work(s) will be delivered free of the rightful claim of any person arising from patent, copyright, trademark infringement, trade secret, or other proprietary right held by any third party.

7.2 **Fitness.** In addition, Developer warrants that the work(s) will be fit for the purpose for which such work(s) are ordinarily intended.

7.3 **Exclusive Creation.** Developer further warrants that the work(s) sold herein shall only be sold to Client and to no other at any time hereafter, except as expressly authorized elsewhere within this Agreement, and that none of the work(s) contained herein have been sold to a third party prior to the signing of this Agreement, other than those already disclosed and accepted by Client.

7.4 **No Preexisting Work.** No preexisting work has been incorporated into the website developed by Developer and delivered to Client other than that which has been expressly disclosed by Developer and approved by Client. Further, any preexisting work included as approved by Client contains the necessary rights, titles, licenses, and interests as outlined elsewhere within this Agreement, which shall permit Client's use of said preexisting material(s) and in Client's exclusive website.

7.5 **Compatibility.** The work(s) delivered by Developer to Client will be compatible with the latest version(s) of all applications utilized in the creation of Client's website, as well as be compatible across all platforms and browsers.

7.6 **Authorization to Enter Agreement.** Developer has the full right and power to enter into this Agreement and to grant the exclusive rights in and to the website developed by Developer, and related content included in said website, to Client.

7.7 **Indemnification.** Client will indemnify, defend and hold harmless the Developer for any breach of this Agreement or warranty stated herein, in addition to satisfying any liability to the Developer or any party as may be adjudicated against the Client. The Client may enter into such settlement agreements with parties in instances in warranty breach as are

consented to by the Developer.

8. INDEMNIFICATION.

8.1 **General Indemnity.** Each Party (the "Indemnitor") will defend at its expense, indemnify, and hold harmless the other Party and such other Party's affiliates, officers, directors, shareholders, employees, and agents (each an "Indemnitee") from costs, expenses, and losses in connection with claims or actions by third parties arising out of or relating to: (i) any breach of a warranty in Section 7 of this Agreement by the Indemnitor; (ii) any negligent acts/errors/omissions of the Indemnitor or any intentionally tortious conduct on the part of the Indemnitor; or (iii) any breach of this Agreement.

8.2 **Indemnification Procedures.** Each Party's obligation to indemnify the other Party hereunder shall be conditioned upon the Indemnitee: (i) promptly notifying the Indemnitor in writing no later than thirty (30) days after the Indemnitee's receipt of notification of a potential claim (provided that the failure to provide such notice shall not limit the Indemnitee's right to indemnification hereunder except to the extent that the Indemnitor is materially prejudiced by such failure); (ii) providing the Indemnitor a copy of all information received by the Indemnitee with respect to the claim or action; and (iii) allowing the Indemnitor to control the defense and settlement of the claim or action, including the selection of attorneys; however, Indemnitor must obtain Indemnitee's written consent before settlement of the claim. The Indemnitee will have the right to participate in the settlement or defense of any such claim or action at its own expense. The Indemnitee shall not be bound by any settlement made by the Indemnitor to which the Indemnitee has not consented.

9. TERM AND TERMINATION.

9.1 **Term.** This Agreement shall commence on the Effective Date identified and all terms detailed herein shall remain in effect until such time as the objectives and project parameters of this Agreement are satisfied in full or earlier termination of this Agreement as listed in this Section 9 or as permitted elsewhere within this Agreement.

9.2 **Termination For Cause.** Either party may terminate this Agreement for cause immediately by written notice upon the occurrence of any of the following events:

- (i) if the other party ceases to do business, becomes insolvent, makes a general assignment for the benefit of its creditors, or otherwise terminates its business operations;
- (ii) if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing;
- (iii) if the Developer breaches or defaults under any of Developer's obligations contained in this Agreement, if Developer is unable to or refuses to perform services hereunder, or Developer breaches or defaults on any material provision of this Agreement and fails to fully cure such breach within thirty (30) days of written notice describing such breach; or
- (iv) if Client breaches any material provision of the Agreement and fails to fully cure such breach within thirty (30) days of written notice describing such breach.

9.3 **Termination Without Cause.** Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party.

9.4 **Rights Upon Termination; Survival.**

- (i) **Rights Upon Termination.** Upon any termination or expiration of this Agreement, all legal obligation, rights and duties arising out of this Agreement shall terminate except that: (i) Licensee shall immediately return the Confidential Information and all related materials and copies thereof to the respective disclosing party; (ii) the due date of

all monies due Lessor shall automatically be accelerated so that such payments shall become due and payable on the effective date of termination, even if longer terms had been provided previously; (iii) the provisions of Section 4 and Section 5 of this Agreement shall continue to apply and survive the termination of this Agreement as ongoing covenants between the Parties; (iv) Developer shall have the ongoing obligation to continue to deliver to Client all tangible and intangible material(s) of the customer and all versions of any Proprietary material(s) of the Client or developed for the Client during the effective period of this Agreement; (v) Developer shall have the ongoing obligation and duty to confirm in writing and take all reasonable steps to secure proprietary rights in the Proprietary material(s) developer pursuant to this Agreement in the name and exclusive ownership of the Client; and (vi) all other Sections not inconsistent with this provision shall survive.

(ii) **Survival.** Termination or expiration of this Agreement shall not relieve either party of any payment or other obligation under this Agreement which was to have been performed by such party prior to the termination. All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement including, without limitation, the provisions of Section 2 (Developer Compensation and Fees), 4 (Confidentiality), 5 (Proprietary Rights), 8 (Indemnity), 9.4 (Rights Upon Termination; Survival), and 10 (General) will survive the termination of this Agreement.

10.

GENERAL.

10.1 **Advisement.** Licensee hereby acknowledges that they have a) read this Agreement; b) have been provided a full and ample opportunity to study it; c) has been hereby advised in writing to consult with an attorney prior to signing this Agreement; and d) that signing this Agreement is voluntarily, without coercion, and with full knowledge that it is intended, to the maximum extent permitted by law, as the complete and full agreement accepted by both parties.

10.2 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of [ENTER STATE] without regard to conflicts of laws principles and specifically excluding the provisions of the United Nations Convention on the International Sale of Goods. Any legal action or proceeding with respect to this Agreement shall be proper only in the state and federal courts located in [ENTER COUNTY OF STATE] in the state of [ENTER STATE], United States of America. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts.

10.3 **Compliance With The Law.** Client acknowledges and agrees that the website and/or related material(s) created and delivered by Developer to Client in accordance with the terms of this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act of 1979, as amended and the regulations promulgated thereunder. Client further agrees to comply with all laws and regulations of all jurisdictions in Client's use of the website and/or related material(s) created and delivered by Developer to Client in accordance with the terms of this Agreement, including such export regulations.

10.4 **Assignment.** Neither party may sell, transfer, assign, delegate, subcontract, attempt to assign nor otherwise transfer any right or obligation arising out of this Agreement without the prior written consent of the party; such consent not to be unreasonable withheld, conditioned, or delayed.

10.5 **Notices.** Any notices, demands or consents required or permitted under this Agreement will be in writing and shall be either (a) personally delivered, (b) sent by facsimile, or (3) sent by prepaid registered or certified mail, return receipt requested, addressed to the other party at the address set forth above or at such other address as such party will specify to the other

party in writing.

10.6 **Modification of Web Design and Development Agreement.** Any modifications requested by either Developer or Client to the terms and conditions of this Agreement shall be done in writing and submitted to either party for consideration. No modifications or revisions requested to this Agreement shall be of any force or effect unless the same are in writing and executed by both parties.

10.7 **Severability.** If any provision of this Agreement is adjudicated as illegal, invalid, or unenforceable by any court, tribunal, administrative body, or government authority of competent jurisdiction such provision shall, to the extent required, be deemed stricken from this Agreement and all other terms within the Agreement shall survive and remain in full force and effect as if the stricken terms were not a part of the original Web Design and Development Agreement. Developer and Client agree to execute such documents as may be necessary to preserve the intent of the parties and the enforceability of the non-stricken terms in such a situation.

10.8 **Waiver.** Failure or neglect by either party to enforce, at any time, any of the provisions of this Agreement will not be construed or deemed to be a waiver of rights hereunder nor in any way affect the validity, in whole or any part, of this Agreement or prejudice the rights to take subsequent action.

10.9 **Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Neither party shall be liable for any of the actions, omissions, or indebtedness of the other party.

10.10 **Force Majeure.** Except as may be otherwise specifically provided in this Agreement, neither Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended to the extent directly resulting from: act of God; fire; flood; government codes, ordinances, laws, rules or regulations; war or act of terrorism or civil disorder; any other cause beyond the reasonable control of such Party; provided however, that each such event or condition (i) did not exist as of the date of execution of this Agreement, (ii) is not reasonably within the control of, and is not caused or contributed to by the gross negligence or intentional misconduct of the Party claiming excuse, and (iii) prevents as a whole or in material part, the performance by the Party claiming excuse (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the Party seeking excuse of its performance will notify the other Party as soon as possible and the Parties will meet within a reasonably prompt time period to discuss the circumstances and potential solutions to such Force Majeure Event. During the period that the performance by one of the Parties of its obligations under this Agreement has been suspended by reason of a Force Majeure Event, the other Party may likewise suspend the performance of its obligations hereunder to the extent that such suspension is commercially reasonable and related to the suspended performance caused by the Force Majeure Event. The Party claiming the Force Majeure Event will use commercially reasonable efforts to minimize damages to the other Party resulting from the nonperformance of the Party claiming the Force Majeure Event and will use commercially reasonable efforts to remedy or cure such Force Majeure Event and resume performance after the removal or cessation of the Force Majeure Event, including providing, where available, substitution services at reasonable rates and cost not to exceed the rates and costs set forth in this Agreement. The time for performance of this Agreement shall be extended for a period equal to the duration of such Force Majeure Event, provided

that if the delay of such Party's performance exceeds [X] days, the Party not claiming suspension pursuant hereto may, upon delivery of written notice, terminate this Agreement or in its discretion any portion thereof that is affected by the Force Majeure Event without liability to the Party claiming suspension. Upon the cessation or termination of the Force Majeure Event, the Party claiming suspension under this Section shall notify the other in writing of such cessation or termination of the Force Majeure Event.

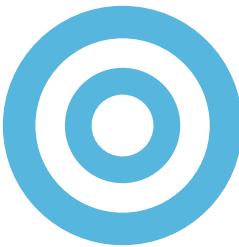
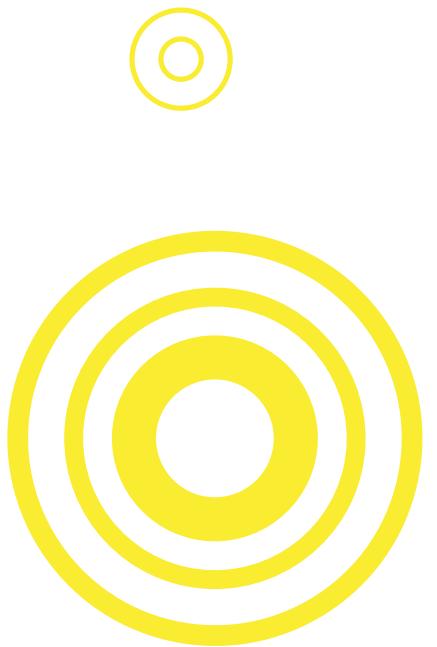
10.11 **Headings.** The headings of the terms and conditions contained in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

10.12 **Counterparts.** This Agreement may be executed in two or more counterparts, and each counterpart will be deemed an original, but all counterparts together will constitute a single instrument.

10.13 **Attorneys Fees.** If an action is commenced to seek a determination or enforce any of the provisions of this Agreement with any court or regulatory authority of competent jurisdiction, including without limitation, an arbitration proceeding, the prevailing party shall, in addition to its other remedies, be entitled to recover reasonable attorney's fees, arbitration fees and court costs, including such fees and costs on appeal, from the other party.

10.14 **Disclaimer.** Neither party makes any statement, warranty, representation or promise not expressly set out in this Agreement, or required by law.

10.15 **Entire Agreement.** This Agreement (including its Exhibits) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. Nothing in this Agreement is intended or will be construed to give any person (other than Licensor and Licensee) any legal or equitable right, remedy or claim under this Agreement or any provision hereof. No purchase order, invoice or similar document will by its terms amend or supplement the terms and conditions of this Agreement, even if accepted or signed by the receiving party.



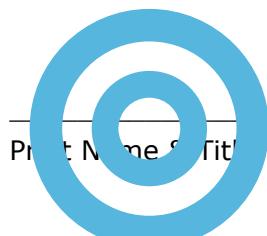
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

DEVELOPER:



CLIENT:

Authorized Signature



Contact Phone Number

Fax Number

Date

Authorized Signature

Print Name / Title

Contact Phone Number

Fax Number

Date

EXHIBIT "A"
Website Specifications

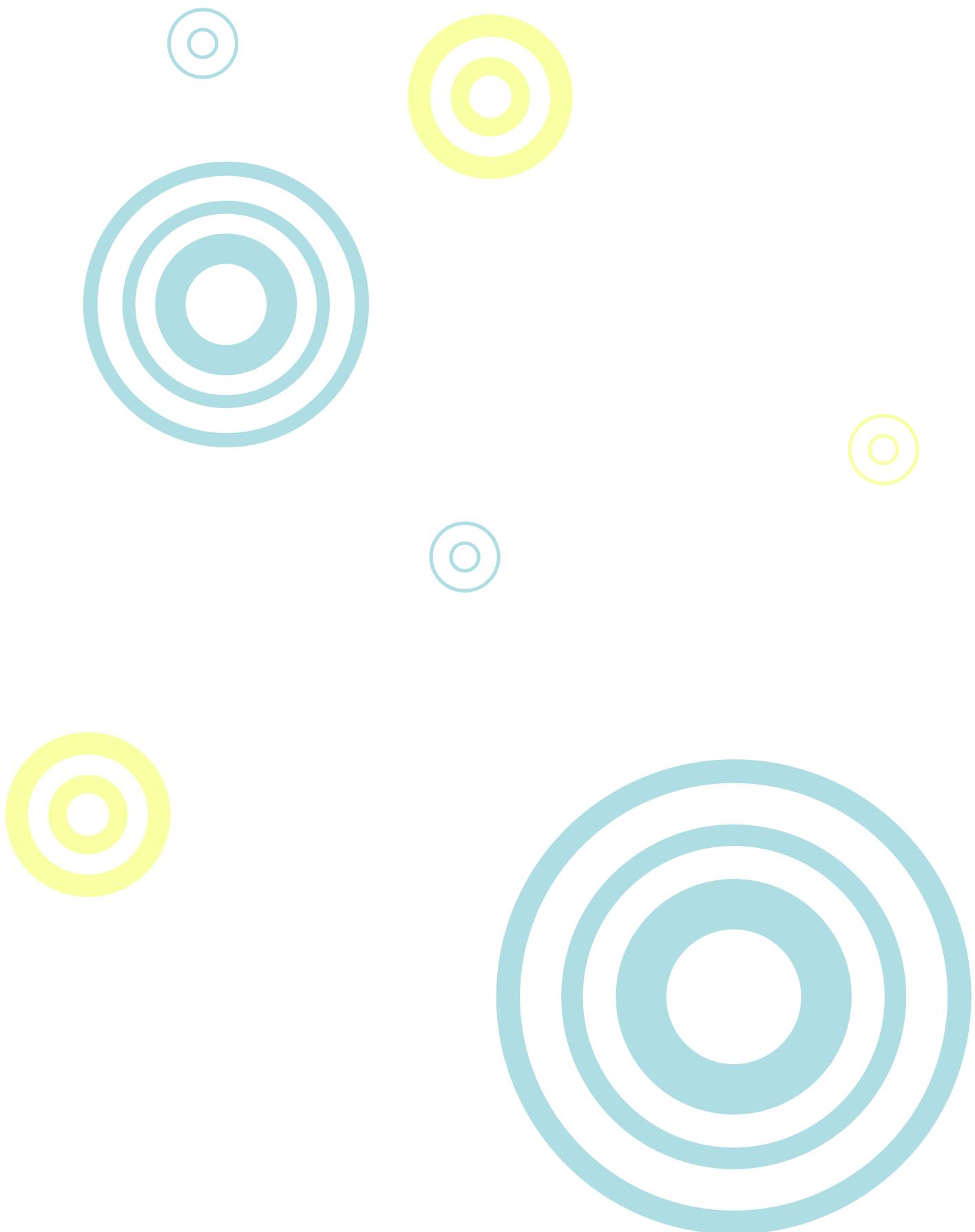


EXHIBIT "B"
Client's Website Content

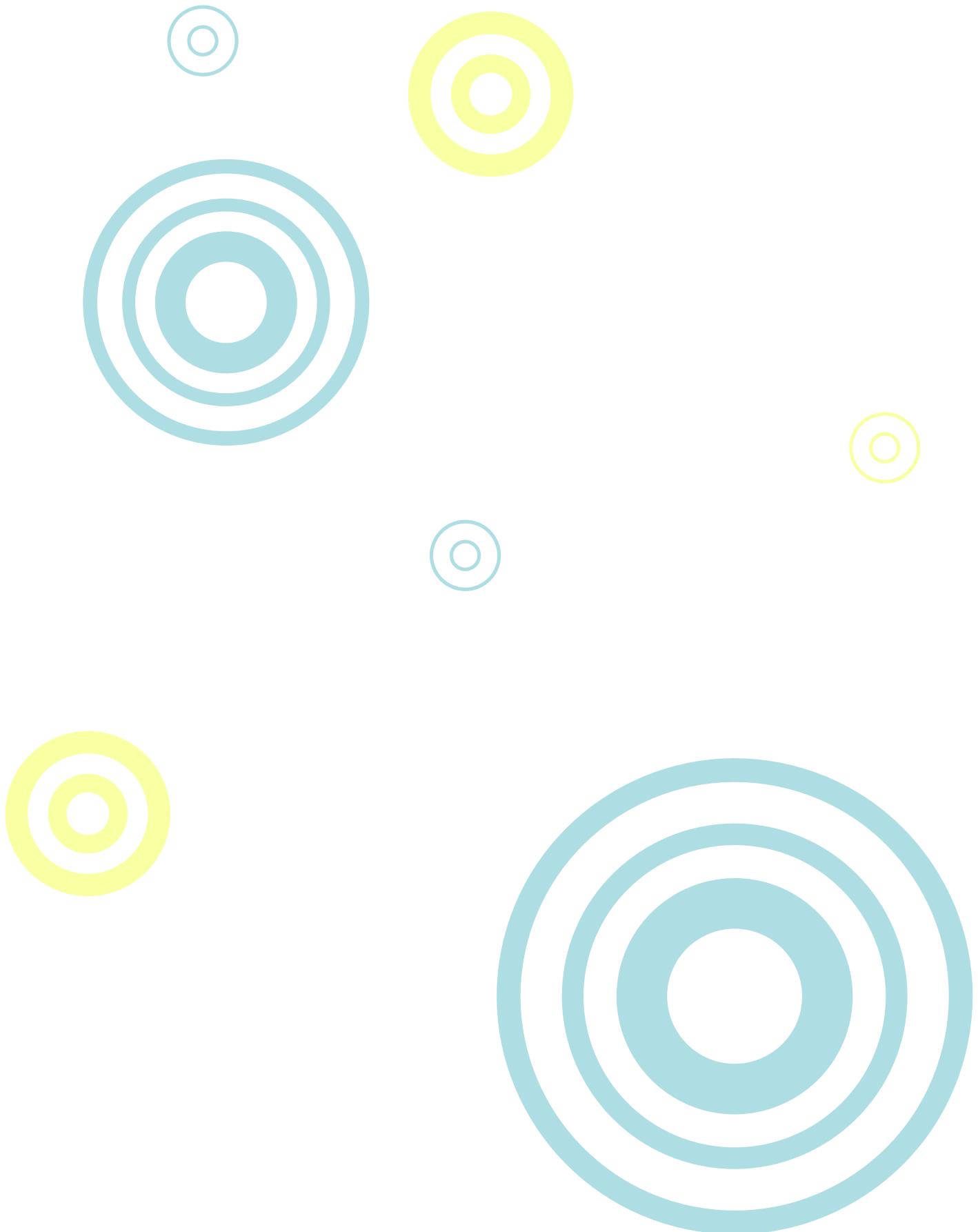


EXHIBIT "C"
Developer Compensation Fees & Payment Schedule

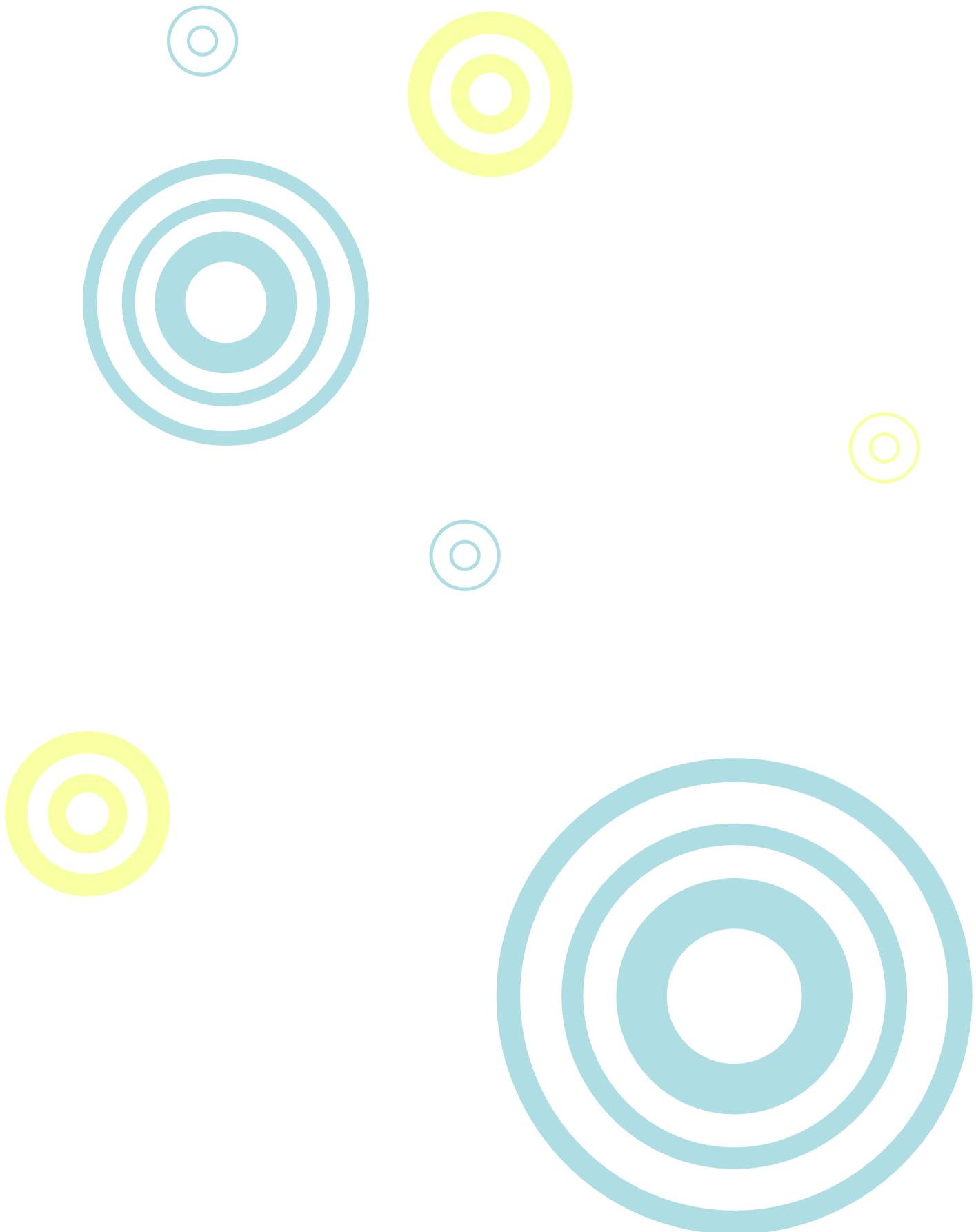


EXHIBIT "D"
Developer License of Specific Portions

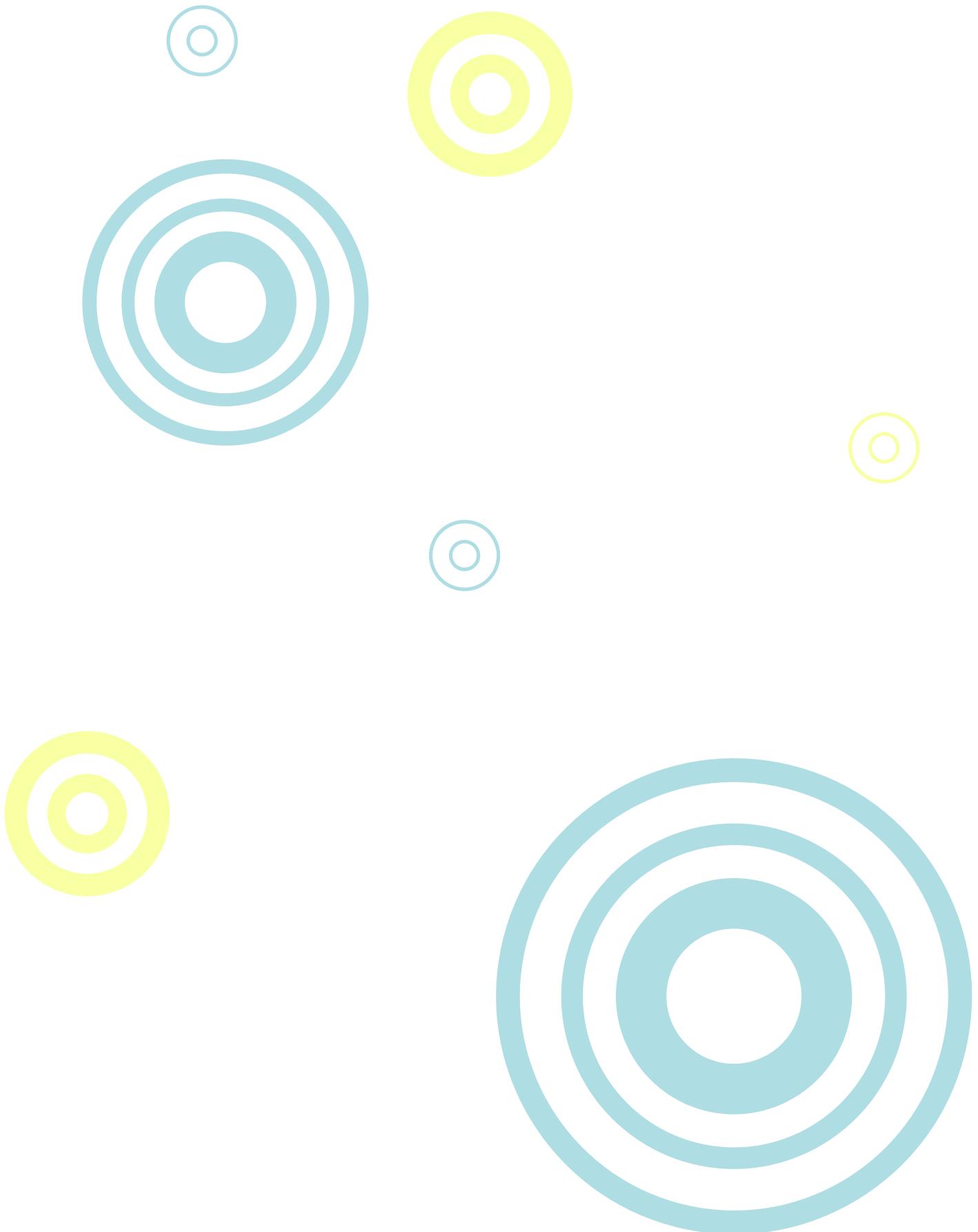


EXHIBIT "E"
Project Quote Acceptance Form

PROJECT QUOTE ACCEPTANCE FORM

PURPOSE OF FORM: The purpose of this form is to provide [CLIENT NAME] with a summary of the work description, timeline, and cost attached to the creation and completion of their requested project to be developed by [DEVELOPER NAME], and obtain [CLIENT'S NAME] acceptance of these details and corresponding terms.

PROJECT CONTACT INFORMATION & IDENTIFICATION:

DEVELOPER CONTACT DETAILS

Developer Name: _____

Project Name: _____

Project Manager: _____

Contact Information: _____

CLIENT CONTACT DETAILS

Client Name: _____

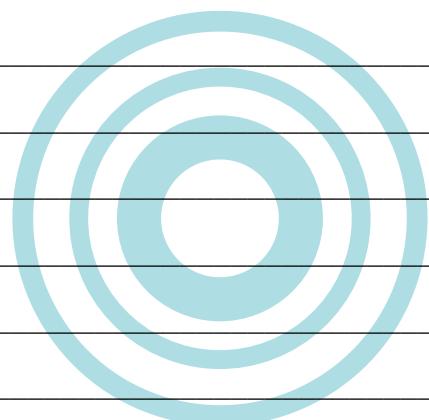
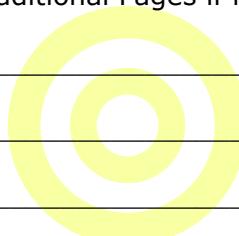
Client URL: _____

Project Contact: _____

Contact Information: _____

1. PROJECT DESCRIPTION:

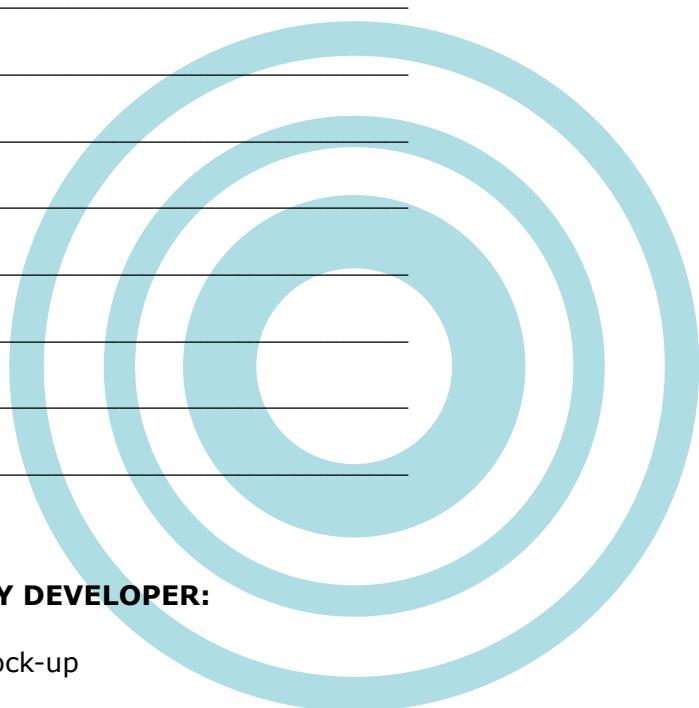
Full Description of Project Request (Attach Additional Pages if Necessary):



2. TECHNOLOGY TO BE UTILIZED:



Full Description of Applications, Software, and Technology to be Included:



3. PROJECT TIMELINE FOR DELIVERABLES BY DEVELOPER:

Provide Breakdown of Dates Client to Receive Each Mock-up

1st Mock-Up Due Date*:

Client Feedback of Mock-Up Due Date:

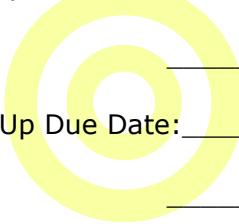
1st Modification to Mock-Up Due Date*:

Client Feedback of 1st Modification to Mock-Up Due Date:



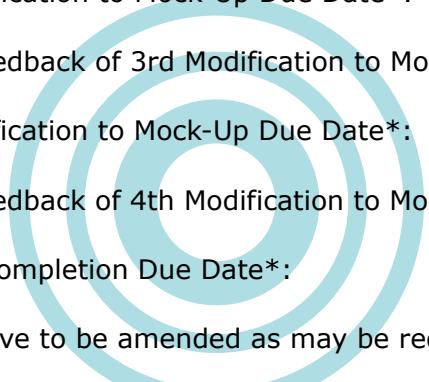
2nd Modification to Mock-up Due Date*:

Client Feedback of 2nd Modification to Mock-Up Due Date:



3rd Modification to Mock-Up Due Date*:

Client Feedback of 3rd Modification to Mock-Up Due Date:



4th Modification to Mock-Up Due Date*:

Client Feedback of 4th Modification to Mock-Up Due Date:

Project Completion Due Date*:

*The above to be amended as may be required based on [CLIENT'S NAME] delivery of initial project materials and return of feedback on the dates outlined above.



4. TOTAL PROJECT PRICE:

Provide Total Project Quote:



\$ _____

5. PROJECT PAYMENT TERMS:

Terms of Payment

- A. Full payment required before project commencement
- B. Payment to be provided NET 30
- C. Payment to be remitted accordingly to the following milestones
 - 1.) List Date of 1st Milestone _____
 - 2.) List Date of 2nd Milestone _____
 - 3.) List Date of 3rd Milestone _____
 - 4.) List Date of 4th Milestone _____
 - 5.) List Date of 5th Milestone _____
- D. One-half (50%) of total project to be remitted at time of project quote acceptance and prior to commencement of any development, and remaining one-half (50%) to be remitted at time of completed project package receipt and acceptance.

acceptance and prior to commencement of any development, and remaining one-half (50%) to be remitted at time of completed project package receipt and acceptance.

6. Attestation/Certification: The above form outlines the mutual understanding between [DEVELOPER NAME] and [CLIENT NAME] as to the full scope of the work that has been requested by [CLIENT NAME] to be completed by [DEVELOPER NAME]. By signing this document, [CLIENT NAME] agrees that [DEVELOPER NAME] has adequately outlined their project needs, identified all items to be created, agreed to the quoted price to develop these materials, accepts the timeline articulated, and to be bound by all provisions of this project acceptance form to be attached to our corresponding agreement regarding the same.

DEVELOPER:

CLIENT:

Authorized Signature

Authorized Signature

Print Name & Title

Print Name & Title

Contact Phone Number

Contact Phone Number

Fax Number

Fax Number

Date

Date