

# WEBSITE DEVELOPMENT CONTRACT

## Statement of Work

This Statement of Work (the “SOW”), along with the Terms and Conditions, make up the service agreement (the “Agreement”).

**Offer Availability.** The terms and prices offered in the Statement of Work will be available to you for 30 days.

### Deliverables

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### Timeline

\_\_\_\_\_

### Fee

The project is billed at a flat fee of \$\_\_\_\_\_ total. As detailed in the timeline, \_\_\_\_\_% is due at project start and the remainder is due on site launch.

## Terms & Conditions

### Parties:

\_\_\_\_\_ (“Developer” or “We”)  
\_\_\_\_\_

Developer Email for Notice: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (“Client” or “You”)

\_\_\_\_\_

Client Email for Notice: \_\_\_\_\_

## Development Services

**Professional Standard.** Developer will provide the services identified in the Statement of Work.

Developer will provide these services in a professional manner, and in accordance with applicable professional standards.

**Deliverables.** Developer will provide its Deliverables to the Client as a functional prototype and additionally as compressed source code. The Client understands that it may need particular software and expertise to use the deliverables. If the Client would like its deliverables in a specific file format, the Client must request to have the format included in the Statement of Work.

## Change Request

A "Change Request" is any request for work outside the scope of the Statement of Work.

If such a request is made, the Developer will notify the Client that it is a Change Request. If the Client still wants to proceed with the Change Request, the Developer will bill the work on a time and materials basis, at the Developer's standard hourly rate of \$\_\_\_\_\_/hr. The Developer may also extend its delivery schedule.

If the Change Request alters the scope of the project by more than \_\_\_\_\_%, the Developer may submit a new proposal to the Client.

## Payment

**Invoice.** The Developer will invoice the Client according to the Statement of Work. Client shall pay all invoices within \_\_\_\_\_ days of receipt.

**Expenses.** In addition to Developer's fees, the Client will be invoiced for Developer's expenses. Developer's travel and lodging expenses will be invoiced to the Client without markup. Meal expenses will not be invoiced to the Client at all. Other Expenses incurred by the Developer in performing services to the Client will be invoiced to Client at Developer's standard mark-up of \_\_\_\_\_%. Other Expenses include, without limitation, font licenses, postage, shipping, models, presentation materials, photocopies, equipment rental, photographer's costs and fees, photography and/or artwork licenses, prototype production costs, talent fees, music licenses, software licenses, online access, Software as a Service, and hosting fees.

**Taxes.** Client is responsible for paying all applicable taxes, including sales, use and value added taxes.

**Late Payment.** Overdue balances may be charged a monthly service fee of \_\_\_\_\_% (or the greatest amount allowed by law).

## Delivery

**Timeframe.** The Developer will use commercially reasonable efforts to perform the Services within the schedule outlined in the Statement of Work. Developer's delivery timeframe depends upon the Client's prompt response to any questions or requests for Client materials.

**Developer Agents.** The Developer may hire third party developers or service providers

("Development Agents") as independent contractors. The Developer is responsible for Development Agents' compliance with this Agreement.

**Testing & Acceptance.** The Developer shall use commercially reasonable efforts to test Deliverables before providing them to the Client.

If the project includes XHTML or HTML markup and CSS templates, the Developer will use HTML5 markup and CSS3 for styling. The Developer will test the markup and CSS in current versions of Safari, Chrome, Firefox, and Internet Explorer. The Developer will not test websites in older browsers, unless specifically identified in the Statement of Work.

The Client shall promptly review all deliverables, and must notify the Developer of any failure to conform to the Statement of Work within 5 business days of receipt. If Developer does not receive a timely notification, the Deliverable will be deemed accepted. The Client's notification must clearly identify the problems with the Deliverable.

**Client Responsibilities.** Client must promptly: (a) coordinate any decision-making activities with 3<sup>rd</sup> parties; (b) provide Client Content in a form suitable for reproduction or incorporation into the Deliverables; and (c) proofread deliverables.

### **Client Rights in Deliverables.**

**IP Assignment.** Upon completion of the Services and full payment of all invoices, the Developer shall assign IP rights to the Client. These IP rights include all ownership rights, including any copyrights, in any code, artwork, designs and software created by the Developer and incorporated into a Final Deliverable, except as otherwise noted in this Agreement.

### **Developer Rights in Deliverables.**

**Preliminary Works.** Developer retains the rights to all Preliminary Works that are not incorporated into a Final Deliverable.

**Preliminary Works[Source Code].** Developer retains the rights to all Source Code. Client licenses any included source code for use specific to Deliverables, excepting Developer expressly grants permission to reuse the code, or Developer licenses the code elsewhere granting suitable permissions).

**Developer Portfolio.** Developer may display the Deliverables in the Developer's portfolios and websites, and in galleries, design periodicals and other exhibits for the purposes of professional recognition. Likewise, the Developer may publicly describe its role in the Project.

**Credit.** If the Developer incorporates credits into the Deliverables, any use of the Deliverables shall continue to bear the credits in the same form, size and location.

**Developer Tools.** The Developer may incorporate certain Developer Tools into the Deliverables.

"Developer Tools" means all development tools developed or used by Developer in performing

the Services, including without limitation: pre-existing and newly developed software, Web authoring tools, type fonts, and application tools.

In the event Developer Tools are incorporated into any Final Deliverable, then Developer grants Client a royalty-free, perpetual, worldwide, non-exclusive license to use the Developer Tools to the extent necessary to use the Final Deliverables. Developer retains all other rights in the Developer Tools.

## **Developer and Client Relationship**

**Non-Exclusive.** This Agreement does not create an exclusive relationship. The Deliverables are not a "work for hire" under Copyright Law.

**No Assignment.** Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Any such attempted assignment will be *void ab initio*. Consent is not required for a disposition of substantially all assets of the assigning party's business.

**Confidential Information.** Each party shall maintain Confidential Information in strict confidence, and shall not use Confidential Information except (a) as necessary to perform its obligations under the Agreement, or (b) as required by a court or governmental authority. Confidential Information includes proprietary technical and business information, Preliminary Works, and any other information marked "Confidential."

**Exception.** Confidential Information does not include (a) any information that is in the public domain, (b) becomes publicly known through no fault of the receiving party, or (c) is otherwise known by the receiving party before obtaining access to it under this Agreement or properly received from a third party without an obligation of confidentiality.

## **No Solicitation**

**Six-Month Non-Solicit.** During the term of this Agreement, and for a period of 6 months after its expiration, Client shall not Solicit any of Developer's employees or Development Agents (collectively, "Developer Employee"). "Solicit" is defined to include: solicit, recruit, engage, or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire, or any other basis.

**Agency Commission.** In the event of such Solicitation, Client shall pay Developer an agency commission of 25% of the Developer Employee's starting salary with Client, or if hired as a contractor, 25% of the total contract fees paid to Developer Employee during the first year following the Solicitation.

## **Termination**

**Discretionary Termination, Upon Notice.** Either party may terminate this agreement in its business discretion upon sufficient advance notice. The amount of notice required is 1/4 of the

estimated project duration. For example, if the Statement of Work estimates the services will take 80 days from kick-off to final delivery, advance notice of at least 20 days will be sufficient for discretionary termination.

**Discretionary Termination by Client.** IF: Client uses this discretionary termination provision, THEN: Developer will retain all payments already made as of the notification date, and Client shall pay Developer (a) for all expenses incurred as of the date of notification of termination, (b) an early termination fee equal to 25% of the total project fee, and (c) no IP rights will be transferred.

**Discretionary Termination by Developer.** IF: Developer uses this discretionary termination provision, THEN: (a) Developer will retain (or, if not paid in advance, will be due) all costs already incurred and a prorated portion of the fees for services performed up to the termination date, (b) Developer will assist Client in transferring the project to a new developer, and (c) Developer will assign sufficient IP rights to Client to allow Client to continue the project.

**Termination for Bankruptcy.** Subject to any restrictions imposed by law, either party may immediately terminate this Agreement, if the other party either: (1) ceases to do business in the normal course; (2) becomes insolvent; (3) admits in writing its inability to meet its debts or other obligations as they become due; (4) makes a general assignment for the benefit of creditors; (5) has a receiver appointed for its business or assets; (6) files a voluntary petition for protection under the bankruptcy laws; (7) becomes the subject of an involuntary petition under the bankruptcy laws that is not dismissed within 60 days.

**Termination for Breach.** If a material breach of this Agreement is not cured within 10 business days after a party's receiving notice of the breach, then the non-breaching party may terminate this Agreement immediately upon notice.

**Termination Procedure.** Upon expiration or termination of this Agreement: (a) each party shall return (or, at the disclosing party's request, destroy) the Confidential Information of the other party, and (b) other than as expressly provided in this Agreement, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

## **Risk Allocation**

### **Client Representations**

Client represents and warrants to Developer that:

- Client owns sufficient right, title, and interest in the Client Content to permit Developer's use of the Client Content in performing the Services,
- To the best of Client's knowledge, Developer's use of the Client Content will not infringe the rights of any third party,
- Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and

- Client shall comply with all laws and regulations governing the Services and Deliverables.

### **Developer Representations.**

Developer represents and warrants to Client that:

- The Final Deliverables will be the Developer's original creative work, except that Developer may incorporate Client Content, work from its Developer Agents and third party material (for example, stock photos, or Software as a Service).
- For any Final Deliverable that includes the work of independent contractors or third party material, Developer shall secure sufficient rights for Client to use the Final Deliverables for their intended purpose.
- To the best of Developer's knowledge, the final Deliverables will not infringe upon the IP rights of any third party. However, Developer will not be conducting any type of IP clearance search (for example, Developer will not be conducting a copyright, trademark, patent or design patent clearance search).

### **LIMITATION OF LIABILITY**

**The services and the work product of the Developer are sold "as is." In all circumstances, the Developer's maximum liability to Client for damages for any and all causes whatsoever, and Client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to Developer's net profit.**

**In no event shall Developer be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by Developer, even if Developer has been advised of the possibility of such damages.**

### **LIMITED WARRANTY**

Except for the express representations and warranties stated in this agreement, Developer makes no warranties whatsoever. Developer explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the project.

### **Force Majeure**

Either party may invoke Force Majeure to excuse the failure of its timely performance, if such failure was caused by: fire; flood; hurricane, tornado, or other severe storm; earthquake; act of war; sabotage; terrorism; riot; interruption or failure of electrical or telecommunications service (for example, Internet failures); or failure of suppliers, subcontractors, and carriers to substantially meet their performance obligations.

Failure to make a payment may only be considered a Force Majeure event if caused by an

interruption in a third-party payment systems that otherwise qualifies as a force-majeure event.

A party invoking force majeure to excuse its failure of timely performance must show that the force-majeure event(s) and their relevant effects (i) were beyond the invoking party's reasonable control and (ii) could not have been avoided through the exercise of due care by the invoking party.

## **Indemnification**

**Applicability.** This indemnification clause governs all obligations arising under this Agreement (if any) that require a party (the "Indemnifying Party") to defend an individual or organization (a "Protected Person") against a claim, for example, a claim made by a third party.

**Indemnification.** IF: A third party makes a claim that, if finally successful, would establish a breach of a representation or warranty of this Agreement; THEN: The party who made the representation or warranty will: (i) defend the Protected Person against the claim (as defined below), and (ii) indemnify each Protected Person against any monetary award entered on the claim (as defined below).

**Indemnification Against Damage Awards.** (a) The Indemnifying Party will indemnify the Protected Person against all monetary awards resulting from a final judgment or award from which no further appeal is taken or possible. (b) Such monetary awards include, for example, damages, penalties, interest, and attorneys-fee awards.

**Defense Obligation.** (a) If the Protected Person requests legal defense, the Indemnifying Party will provide a competent defense against the claim. (b) IF: A Protected Person fails to timely request a defense; THEN: The Indemnifying Party will not be responsible for any harm to the Protected Person that may result from the delay. (c) If the Protected Person does not request a defense against the claim, the Indemnifying Party may elect, its business discretion, to provide a defense anyway. (d) For the avoidance of doubt, the defense obligation of this section applies, without limitation, to any claim brought in a judicial, arbitration, administrative, or other proceeding, including for example any relevant appellate proceedings in which the claim is at issue.

**Control of the Defense.** IF: The Indemnifying Party provides a defense against an indemnified claim; THEN: (a) The Indemnifying Party is entitled to control the defense of the claim. (b) The Protected Person must provide reasonable cooperation in the defense of the claim; the Indemnifying Party will reimburse the Protected Person for reasonable out-of-pocket expenses actually incurred in doing so. (c) The Protected Person must not make any non-factual admission concerning the claim without the Indemnifying Party's consent. (d) The Protected Person must not waive any defense to the claim without the Indemnifying Party's consent.

**Control of Settlement.** (a) The Indemnifying Party has discretion to settle the claim on behalf of the Protected Person, PROVIDED THAT the settlement terms do not (i) impose any obligation or prohibition on the Protected Person, nor (ii) include any admission by the Protected Person. (b)

Any other settlement of the claim by the Indemnifying Party requires the Protected Person's prior written consent, not to be unreasonably withheld. (c) If the Protected Person settles the claim without the Indemnifying Party's prior written consent (not to be unreasonably withheld), then the Indemnifying Party will have no liability to the Protected Person in connection with the settlement.

**Assumption of Control by Protected Person.** A Protected Person may assume control of its defense. IF: A Protected Person does so; AND: The Indemnifying Party has previously tendered performance of its obligation to provide a defense; THEN: The Indemnifying Party will have no further responsibility or liability to the Protected Person (including for example defense and/or indemnity liability) in respect of the claim in question.

## General Terms

### Notices.

All notices shall be sent by email. Permissible addresses for notice include those stated in this Agreement and any other address reasonably communicated.

A notice that is sent by email but is not read by the addressee is nevertheless effective if, but only if, it has been (a) sent from an email account that has been designated for notice and (b) delivered to an email account that has been designated for notice. Email accounts designated for notice are identified at the top of this Agreement, and may be amended only by written notice.

### Dispute Resolution.

**Early Neutral Evaluation.** At the request of either party, the parties will submit any dispute between them, arising out of or relating to this Agreement or any transaction or relationship arising from it, to nonbinding early neutral evaluation, in \_\_\_\_\_, in accordance with the Early Neutral Evaluation procedures of the American Arbitration Association.

**Arbitration.** At the request of either party, the parties will submit any dispute between them, arising out of or relating to this Agreement or any transaction or relationship arising from it, to binding arbitration in \_\_\_\_\_, through the American Arbitration Association. The prevailing party in any dispute resolved by arbitration or litigation will be entitled to recover its costs and attorneys' fees.

**Jurisdiction.** The parties irrevocably consent to the jurisdiction of the state and federal courts located in \_\_\_\_\_ County. The parties hereby waive any jurisdictional or venue defenses and consent to service of process by certified mail.

### Interpretation.

**Governing Law.** This Agreement will governed by the laws of the state of \_\_\_\_\_ without regard to its conflict or choice of law rules.



**Design Terminology:** Any design terminology in the Statement of Work is defined according to standard web development industry usage. Any dispute as to the meaning or scope of development terminology will be determined in good faith by Developer.

**IF / THEN Construction.** Use of capitalized “IF:” and “THEN:” in a sentence is intended only enhance readability. It has no special meaning apart from its lower case meaning.

**Modification & Waiver.** Any modification of this Agreement must be in writing. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

**Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will remain in full force and effect.

**Mutual Drafting.** Any ambiguity or inconsistency in this Agreement is to be resolved in accordance with the most reasonable construction and not strictly for or against either party by virtue of that party’s authorship.

**Headings.** Section headings are provided for convenience only and do not affect the meaning of any terms.

**Integration.** This Agreement comprises the entire understanding of the parties and supersedes all prior agreement and understandings.

## **Definitions**

*Client Content* – all materials, information, photography, writings and other creative content provided by the Client for use in the preparation of and/or incorporation in the Deliverables.

*Third Party Materials* – works that are incorporated into the Final Deliverables, but not created by Developer or owned by Client. Third Party Materials includes, for example, plugins, code libraries, stock photography or illustration.

*Preliminary Works* – all works including, but not limited to, concepts, prototypes, proofs of concept, sketches, or other alternate or preliminary code and documents developed by Developer and which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Deliverables.

*Deliverables* – the services and work product specified in the Statement of Work to be delivered by Developer to Client, in the form and media specified in the Proposal.

*Final Deliverables* – the final versions of Deliverables provided by Developer and accepted by Client.

### *Signatures*

Each signatory represents that it has the full authority to enter into this Agreement and to bind her

or his respective party to all of the terms and conditions of this Agreement.

