

WEB SITE DEVELOPMENT AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

CUSTOMER
[address]
(the "Customer")

OF THE FIRST PART

- and -

DEVELOPER
[address]
(the "Developer")

OF THE SECOND PART

WHEREAS:

- A. Customer desires to engage Developer to develop, create, test, and deliver a Web Site (as hereinafter defined) and to host the Web Site on Developer's Web Server (as hereinafter defined) so that the Web Site is available for browsing on the Internet (as hereinafter defined);
- B. Developer has agreed to undertake such work;
- C. The parties hereto mutually desire to set forth in writing the terms and conditions of their agreement and relationship in this regard.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

1. Definitions

- (a) "Agreement" means this Agreement, the Customer's Request for Proposal dated _____, the Developer's Proposal dated _____, and all accompanying computer files, attachments, addenda, additions, exhibits and schedules annexed thereto.
- (b) "Code" means HTML computer programming/formatting code, functional image map files, and server code necessary to create functional forms, buttons, check-boxes and similar user interface items.
- (c) "Deliverables" means all Code, Documentation, reports, and other materials developed by Developer in the course of its performance under this Agreement, and any other items necessary for the operation of Customer's Web Site, and including all Enhancements thereto, but exclusive of all third party operating system software, third party networking software, web browsers and hardware.
- (d) "Derivative Work" means a work that is based upon one or more pre-existing works, including without limitation any revision, modification, translation, abridgment, condensation, expansion, transformation, adaptation or any other alteration of such pre-existing work(s) (including linking a pre-existing work into the Derivative Work so that a Web Browser would display the pre-existing work within the Derivative Work), which alteration, without authorization of the owner of the copyright in such pre-existing work, would constitute a copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such a pre-existing work.

- (e) "Documentation" means any written or printed materials that relate to the Code that may be developed by Developer in the course of its performance under this Agreement.
- (f) "Enhancements" means changes or additions to the Code and related Documentation.
- (g) "Error" means any error, problem, or defect resulting from:
 - (i) an incorrect functioning of Code;
 - (ii) information displayed on a Web Page that does not conform to the information provided by Customer;
 - (iii) incorrect sequencing of Web Pages, or
 - (iv) any failure of the Deliverables to meet specifications.
- (h) "HTML" means the series of commands for formatting Web Pages known as HyperText Markup Language, and shall include any current and future extensions thereto, whether or not the extensions are commonly viewed as "official".
- (i) "Internet" means the worldwide network of computers commonly understood to provide some or all of the following features, among others: electronic mail, file transfers through File Transfer Protocol ("FTP"), Telnet access, UseNet Newsgroups, Gopher access, Wide Area Information Servers ("WAIS"), and World Wide Web access.
- (j) "Outside Web Site" means any Web Page or other material that can be accessed over the Internet and that does not form part of or is not associated with Customer's Web Site.
- (k) "Web Browser" means software designed to allow interactive access to the World Wide Web and other Internet resources.
- (l) "Web Page" means a document or file that is formatted using HTML and that is intended to be accessible by Internet users with a Web Browser.
- (m) "Web Server" means the computer or computers on which Developer houses its client Web Sites to make them continuously accessible to Internet users.
- (n) "Web Site" means a series of interconnected Web Pages residing in a single directory on a single Web Server.
- (o) "World Wide Web" means all of the Web Pages that are accessible to a typical computer user equipped with access to the Internet and a Web Browser.

2. Contract

"Agreement" means this Agreement, the Customer's Request for Proposal dated _____, the Developer's Proposal dated _____, and all accompanying computer files, attachments, addenda, additions, exhibits and schedules annexed thereto. In interpreting any inconsistencies in this Agreement, [determine and set out order in which documents shall govern].

3. Contract Administration

Each party shall designate the name, address, telephone, fax, and e-mail address of a person who will act as Contract Coordinator. The Contract Coordinator of each party shall be responsible for arranging all meetings, visits, and consultations between the parties, and for the transmission and receipt of Deliverables and technical information between the parties. The Contract Coordinators shall also be responsible for receiving all notices under this Agreement and for all administrative matters such as invoices, payments, and amendments.

The Contract Coordinator for Customer shall be:

The Contract Coordinator for Developer shall be:

The parties' Contract Coordinators will be available Monday through Friday, ___ a.m. to _____ p.m. (local time). Each Contract Coordinator will endeavor to respond within ___ business day(s) of receipt of any requests for information or for decisions that are communicated by telephone between the Contract Coordinators (not over voice mail) or that are communicated by e-mail received and read by the party's Contract Coordinator during those hours.

4. Amendments

4.1 **Change orders.** Amendments to this Agreement or to any of the Specifications or Deliverables under this Agreement shall become effective only when a written change request is executed by the parties' authorized signatories. Change requests that do not substantially affect the nature of Deliverables, their performance or functionality, and that do not cumulatively extend the due date of the Deliverables by more than _____ days or cumulatively increase the dollar amount of the Agreement by more than \$_____ may be requested and/or accepted by the parties' Contract Coordinators if in writing. Developer cannot decline to accept any change requests that reduce the cost of performance, provided that an equitable adjustment in compensation is made for the out-of-pocket costs of any performance or preparation already undertaken. Further, Developer may not decline any change requests that increase the cost or magnitude of performance, provided that such changes are reasonable in scope and a commensurate increase in compensation is fixed, such fee to be based on Developer's initial fee estimates set out in Developer's proposal.

4.2 **Written Change Orders.** For most purposes of this Agreement, all Change Orders shall be printed or typewritten and signed by the Contract Coordinator or other authorized representative of each of the parties. For purposes of this section only, however, an electronic mail message sent by the Contract Coordinator or other authorized representative to the other party's Contract Coordinator or other authorized representative, and an electronic mail message response thereto being received, shall constitute a valid written Change Order if:

- (a) the electronic mail message setting forth the proposed Change Order explicitly and prominently displays the following phrase: "Proposed Change Order Number _____ pursuant to section 4 of the Web Site Development Agreement";
- (b) the responding electronic mail message explicitly and prominently displays the following phrase: "Acceptance of Proposed Change Order Number _____ pursuant to section 4 of the Web Site Development Agreement";
- (c) the author of the responding electronic mail message is an individual authorized pursuant to this section 4 to accept a Change Order of that nature;
- (d) the responding electronic mail message makes clear and specific reference to only one particular electronic mail message to which it is responding;
- (e) the terms of the Change Order, including the nature of the work to be done, the timing and the price of such work, are clearly and specifically set out in the two electronic mail messages without reference to any outside materials including, without limitation, other mail messages, Web Pages, documentation, or the like; and

THIS IS A 13-PAGE DOCUMENT.