

## Web Site Development Agreement

This WEB SITE DEVELOPMENT AGREEMENT (the "Agreement") is made effective as of the date shown below by and between WebMakerUSA.com, Inc. a Texas corporation (the "Developer"), and the undersigned Client (the "Client") whose signature is shown below.

FOR THE mutual consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, Client and Developer, intending to be legally bound, hereby agree as follows:

### Developer's Responsibilities.

1. **Scope of Work.** Client hereby retains the services of Developer to plan, design, build, implement, develop, test, and deliver, and host a Web Site for Client in accordance with the Service Proposal submitted by Developer and agreed to by Client.
2. **Schedule.** Developer and Client will work together to develop a prototype model of the Web Site and will have it completed within a reasonable period of time. Client will provide the prototype source materials requested by Developer in accordance with this Agreement.

### Web Site Design

3. **Design.** The design of the Web Site shall be in substantial conformity with the source material provided to Developer by Client. Developer shall develop the Web Site to project the highest professional image. Developer shall not include any of the following in the Web Site or in Client's directory on Developer's Web Server: text, graphics, sound, or animations that might be viewed as offensive or related in any way to illegal activities; links to other Sites that might be viewed as offensive or related in any way to illegal activities; invisible text, or any other type of hidden text, hidden information, hidden graphics, or other hidden materials; or destructive elements or caustic programming of any type.
4. **Materials Provided by Client.** All materials to be supplied by Client may be provided via e-mail, fax, or telephone communication with a representative specifically authorized by Developer. Materials will be provided in standard word processing text format or other professionally acceptable format (HTML ASP, Cold Fusion, etc.) as agreed upon by Developer. Images may be provided as bitmaps, TIFF's, GIF's, JPEG's or Photoshop files.
5. **Specifications for Home Page.** The Web Site will consist of a Home Page (the introductory page) that can be accessed by typing an agreed upon URL into a Web Browser. Developer will use its reasonable best efforts to register the domain name for the benefit of Client (or such other name or names as may be available and acceptable to Client) for a period of time set forth on the Proposal. Developer will immediately assign all rights thereto to Client. Client agrees to pay all registration fees associated with such registration or registration(s).
6. **Availability on Search Engines.** At the time that Developer conducts the first "walk through" of final version of the Web Site, Developer will review and optimize Client's Web Site in order to have it found on the following search engines: Google, Yahoo! and any other search engines the Client may reasonably add at that time.

### Web Hosting

7. **Web Hosting.** Developer agrees to host and maintain the Web Site on Developer's Web Server on a yearly basis, and to make reasonable maintenance modifications to the Web Site from time to time in accordance with Client's directions. Such modifications shall be implemented within five business days of Developer's receipt of Client's changes if the changes are easily implemented, and within thirty business

days of Developer's receipt of Client's changes if the changes are not easily implemented. Developer agrees to make its best effort to make the Web Site available on the Internet approximately twenty-four (24) hours per day, to backup the Web Site at least once every four weeks, and to store said back-up materials in a safe and secure environment, fit for the back-up media, and at a location other than the Developer's Web Server location. Developer also agrees to use its reasonable best efforts to ensure reasonable response times to resolve any issues within its control which cause the Web Site to be unavailable.

8. **Transaction Logging.** During the time that the Web Site is located on Developer's Web Server, Developer will make available on a monthly basis and free of charge an analysis of Web Site traffic, including number of visitors per day, number of hits per day, most commonly viewed and downloaded pages and any other such data reasonably requested by Client. These reports will be available on a monthly basis at the request of Client.

### Compensation

9. **Price for Web Site Creation.** The total price for all of the work set forth in this Agreement, including the Server Hosting (excluding costs associated with reserving of Domain names) shall be as shown on the Service Proposal (the "Development Fee"). This price covers all work of whatever nature on the Web Site contemplated in this Agreement. Work will commence once Developer has received the initial deposit. Client will pay the balance due to Developer ("the "Balance Due") once the Web Site is deemed to be operational in a form reasonably acceptable to Client.

10. **Web Hosting and Maintenance Fees.** The fee for the Web Hosting shall be as set forth in the Service Proposal (the "Hosting & Maintenance Fee"). The fee for Hosting shall not increase for a period of one year from the date of Client's acceptance of its final Web Site unless Client requests an upgrade in Hosting & Maintenance service. Hosting & Maintenance service shall commence on the date the web site is fully operational and accepted by Client and future Hosting & Maintenance fees shall be due and payable in advance on the first day of the first succeeding calendar month following and shall be due and payable in like manner on each succeeding calendar month thereafter for the duration of the Web Hosting & Maintenance term as set forth in the Service Proposal.

11. **Invoicing.** Developer shall invoice Client on a monthly basis for the amount of work done during the applicable calendar month. All payments are due upon receipt of an invoice. If there is a dispute with regard to whether work was actually completed or whether an invoice is properly payable, the amount of the invoice in dispute shall not be due until the dispute is resolved which shall not be unreasonably delayed.

12. **Expenses.** Except as expressly agreed otherwise in writing, Developer shall bear all expenses arising out of its performance of its obligations under this Agreement, including, without limitation, expenses for facilities, work spaces, utilities, management, clerical and reproduction services and supplies.

13. **Portfolio Site.** Developer may make reasonable references to the Client and the Web Site for marketing purposes, including describing the Client and the Web Site as a portfolio company. Client agrees that it will identify Developer as the Web Site developer in an appropriate manner. Developer may not issue any press release that refers to Developer's work for Client without Client's prior written approval, which may be withheld for any reason or for no reason at all.

### Confidentiality

14. **Confidential Information.** "Confidential Information" shall mean any and all tangible and intangible information relating to technical data, trade secrets, know-how, management, operations, finances, and products or services, designated as such, of Client or Developer and their affiliates and previously unknown by them. With respect to the Confidential Information, Client and Developer each will use a degree of care

appropriate for the protection of the Confidential Information, but in any event not less than reasonable care. Developer agrees that it will not disclose any Confidential Information to any third party and will not use Client's Confidential Information for any purpose other than for the performance of the rights and obligations hereunder during the term of this Agreement and for a period of three years thereafter, without the prior written consent of the Client, which may be withheld at its sole discretion. No license shall be granted by Client to Developer with respect to Confidential Information disclosed hereunder unless otherwise expressly provided herein.

### Ownership and Rights

15. **Ownership of Work Product.** Except as set forth below, all elements of all Deliverables shall be exclusively owned by Client and shall be considered "Works Made for Hire," pursuant to U.S. copyright laws by Developer for Client. Developer shall be free to use any ideas, concepts, or know-how developed or acquired by Developer during their performance of this Agreement to the extent obtained and retained by Developer's personnel as impressions and general learning.

16. **Force Majeure.** Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

### Relationship of Parties

17. **Independent Developer.** It is expressly understood and agreed that during the term of this Agreement, Developer's relationship to Client will be that of an independent Developer and that neither this Agreement nor the Services to be rendered hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship. Client does not undertake by this Agreement or otherwise to perform any obligation of Developer, whether by regulation or contract. In no way is Developer to be construed as an agent or to be acting as the agent of Client in any respect. Developer is not authorized to bind Client or to incur obligations and liabilities on behalf of Client.

### Term and Termination

18. **Agreement Term.** This Agreement shall be effective as of the date shown below and shall remain in full force and effect for a period of time ("the Duration") shown on the Proposal, unless otherwise terminated as provided in Termination of Work.

**Termination of Work.** Client may, at its sole discretion and without cause, terminate any or all work outstanding, or any portion thereof, immediately upon written notice provided to Developer. No funds paid by Client will be refunded, however, any work already accomplished by Developer will be furnished to the Client subject to the other provisions shown herein. Developer may, at its sole discretion and without cause, terminate any or all work outstanding, or any portion thereof, immediately upon written notice provided to Client. Developer will refund any unused funds and also furnish Client any work already accomplished by Developer subject to the other provisions herein shown.

### Miscellaneous Provisions.

20. **Successors and Assigns.** Except as otherwise expressly provided, this Agreement will be binding and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement.

21. **Severability.** In the event that any provision of this Agreement is held to be unenforceable under applicable law, this agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

22. **Dispute Resolution.** Any dispute<sup>1</sup> related to this Agreement, the services rendered, etc. upon written request of either party, shall be negotiated and mediated and then shall be resolved by binding arbitration decisions ( and not by trial in Court) by arbiters (who shall correctly apply Texas substantive law) in Dallas County, Texas under the Federal Arbitration Act (or under the Texas Arbitration Act if the parties are prohibited by law from contractually choosing the Federal Act) which may be entered as a judgment by any court of competent jurisdiction in Dallas County, Texas.

23. **Governing Law; Jurisdiction; Venue.** This Agreement will be construed in accordance with and governed by the laws of the state of Texas. It is agreed that the venue for all legal actions shall be in Dallas County, Texas.

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<sup>1</sup> Disputes between the parties or disputes arising out of, or relating to, or in connection with this Agreement (or its inducement, creation or execution) or the services rendered or the relationship between Client and Developer whether in contract, in tor, statutory or otherwise.