

Website Development Agreement

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If you're performing website development, get the agreement in writing.

There are too many legal issues involved to leave it to a handshake. For example:

- **Specifications and timelines.** You'll need to reach agreement on the details of the website and when work should be completed.
- **Warranties and indemnity.** Both parties will need assurances that the work will not create legal problems such as claims of copyright infringement or libel.
- **Who owns the work.** You'll need to determine who claims copyright ownership of the site's design and appearance.
- **Assigning the contract.** If you want the right to assign the work to someone else, you'll need to include the ability to assign the agreement.
- **Objections and approvals.** You'll want a simple system for approving (or objecting) to the work.
- **Termination.** Both parties will want an escape hatch in case things turn sour during the development process.

In this chapter we provide a section-by-section analysis of a website development agreement. Explanations of each provision are provided after each section of the agreement.



CD-ROM

The full text of a Website Development Agreement is on the forms CD-ROM.

Identifying the Parties to the Agreement

Before analyzing the contract you will need to properly identify the parties. The sample agreement includes an opening section as follows:

This Agreement is made between _____ [NAME OF CLIENT] (the "Client") with a principal place of business at _____ [ADDRESS] and _____ [NAME OF WEBSITE DEVELOPER] (the "Developer") with a principal place of business at _____ [ADDRESS].

Both parties should list their full business names. Later on in the contract, you can use obvious abbreviations.

If you're a sole proprietor, use the full name you use for your business. This can be your own name or a fictitious business name or assumed name you use to identify your business. For example, if Jane Adams calls her Web development business "ABC Web Development," she would use that name on the contract. Using a fictitious business name helps show you're a business, not an employee.

If your business is incorporated, use your corporate name, not your own name—for example: "John Smith, Incorporated" instead of "John Smith."

If you're a limited liability company, use the name of your company—for example, "John Smith, LLC," instead of just "John Smith."

If you're a partner in a partnership, use your partnership name—for example, "The Smith Partnership" instead of "John Smith."

Refer to the client initially by its company name and subsequently by a short version of the name or as "Client."

Contents of Website Development Agreements

The sample form contains a number of blank spaces to fill in and several alternative provisions you must choose from. The following section explains each section of the agreement and provides guidance on how to complete it. (Refer to Chapter 1 for information about how to assemble and finalize the agreement.)

Definitions

"The Site" means a series of linked Web pages under common control and developed by Developer for Client under this Agreement.

"Client Content" means all data, code, trademarks, and copyrighted content provided by Client for use by Developer on the Site.

"Developer Content" means all data, code, trade secrets, patents, designs, drawings, text created by Developer for use on the Site, including any modifications or enhancements provided by Developer.

The definitions establish the meanings for key terms in the agreement. The definitions for Client Content and Developer Content help to establish ownership rights. The Client Content includes materials that the client will supply for use on the site, such as photos or trademarks. Later in the agreement, the client makes assurances that it has the legal right to use this material.

Developer Services

Developer will perform the development services described in Attachment 1. There are four stages of development services: Concept, Design, Initial Development, and Final Development. Developer will complete the four stages on or before the dates listed in Attachment 1. Before delivering the Site to Client, Developer will test its components to make sure the Site and its components work as intended.

We've divided the development process into four stages: concept, design, initial development, and final development. Many developer agreements have variations—for example, using only two stages: initial and final development. We've used four to break the project into bite-sized pieces and allow changes in course at various checkpoints.

In the preliminary stage, you and the client simply work on specifications and concepts. This is a good way to determine whether the client's ideas for the site are workable.

After that, we've established a design stage that should allow you and the client to have a good idea what the site will be.

That's followed by the initial and final stages.

Evaluation and Acceptance

As Developer completes each stage, Developer will submit the completed materials to Client for approval. Client will have ___ days to approve the completed materials or provide corrections and comments.

Developer will have ___ days after receiving Client's comments and corrections to submit a revised version of the materials to Client. Client will review the revised version within ___ days of receipt and either approve the corrected version or make further changes.

If Client determines, in its reasonable discretion, that the materials are not acceptable after two attempts at correction by Developer, Client can terminate this Agreement. If Client fails to provide approval or comments during any of the approval periods, those materials will be considered to be approved.

If Client terminates this Agreement under this provision, Developer shall be entitled to compensation on a time and materials basis at an hourly rate of \$[HOURLY RATE] plus expenses to the date of termination. Developer shall submit an invoice detailing its time and expenses. If the invoice amount is less than the amounts paid to Developer prior to termination, Developer shall promptly return the excess to Client. If the invoice amount exceeds the amounts paid to Developer prior to termination, Client shall pay Developer the difference within 30 days of the date of the invoice.

Once the project is underway, the client will want a chance at various points to review what's been done and to accept or reject it. This clause requires the client to sign off on each phase of the project as it is completed. You need to indicate how many days the client will have to accept or reject your work after it is received. If the client rejects your work, you have a given number of days to revise it. You need to indicate how many days. The client will then have a certain number of days to review your changes—you need to indicate how many in this clause.

If the client feels you've failed to correct the deficiencies after two attempts, it has the right to terminate the agreement. But, in this event, the client must pay you at an hourly rate for the work you've already done. You must indicate your hourly rate in this clause.

Also, note that the clause provides that if the client fails to provide approval or comments during any of the approval periods, those materials will be deemed to be approved.

Compensation

There are two basic ways to pay a developer for creating a website:

- a fixed price agreement, or
- a pay per hour ("time and materials") agreement.

Alternative 1: fixed price agreements

Client shall pay, upon completion of each of the following Milestones, the following amounts to Developer:	
Fee	Due Date
\$ _____	Within __ days of the effective date
\$ _____	Upon approval of the Design Stage
\$ _____	Upon approval of the Initial Development Stage
\$ _____	Upon approval of the Final Development Stage

One payment option is for the client to pay the developer a fixed price for the entire project. In theory, this payment scheme favors the client by giving the client certainty as to what the project will cost. Moreover, if payments are tied to the progress of the developer's work, it gives the client substantial leverage to insist on timely and successful completion of the project.

At first glance, fixed-price agreements would seem to be risky for developers: If the project takes much longer than originally anticipated, the developer could end up losing money. However, as a practical matter, fixed-price agreements usually do not end up favoring the client

as much as one would think. If it turns out that the fixed price originally agreed upon will not provide the developer with fair compensation because the project ends up taking too long, the client will probably end up agreeing to pay the developer more money. Otherwise the developer may quit or end up delivering a hastily-completed and shoddy product.

Fixed-price contracts are normally paid in installments, with payment of each installment tied to completion and acceptance of a phase of the project. This clause requires you and the client to agree on the amounts to be paid after approval of each phase. In addition, an initial down payment is made when the contract is signed.

The amount of the down payment is often a point of contention in fixed-price contracts. Naturally, the developer should obtain as large a down payment as possible.

Alternative 2: “time and materials” agreements

Developer shall be compensated at the rate of \$[RATE] per hour [OR “day,” “week,” “month”]. Payment will be made within [NUMBER OF DAYS] days of the date of Developer’s invoice for work completed. [OPTIONAL: “Unless otherwise agreed upon in writing by Client, Client’s maximum liability for all services performed during the term of this Agreement shall not exceed \$[MAXIMUM AMOUNT].”]

Under a “time and materials” agreement, the developer charges the client by the hour, day, or month at a flat hourly cost. This is by far the safest way to be paid if it’s difficult to estimate exactly how long a project will take. However, many clients will wish to place a cap on your total compensation because they’re afraid you’ll “pad” your bill. If this is the case, include the optional sentence providing for a cap, but make sure it’s large enough to allow you to complete the job.

Payment of Developer’s Expenses

Expenses are the costs you incur that you can attribute directly to your work for a client. They include, for example, the cost of phone calls or traveling done on the client’s behalf. Expenses do not include your normal fixed overhead costs such as your office rent, the cost of commuting to and from your office, or the wear and tear on your equipment. They also do not include materials the client provides you to do your work.

Whether or not you are reimbursed for expenses and the extent of such reimbursement is a matter for negotiation.

Alternative 1: full reimbursement

Client shall reimburse Developer for all out-of-pocket expenses incurred by Developer in performing services under this Agreement. Such expenses include, but are not limited, to

- (a) all communications charges;
- (b) travel expenses other than normal commuting, including airfares, rental vehicles, and highway mileage in company or personal vehicles at _____ cents per mile; and
- (c) other expenses resulting from the work performed under this Agreement.

Developer shall submit an itemized statement of Developer's expenses. Client shall pay Developer within 30 days from the date of each statement.

The first alternative calls for payment of all the developer's out-of-pocket expenses; this may include items like communications charges (telephone, fax, postage, etc.).

Alternative 2: you pay expenses

Developer shall be responsible for all expenses incurred while performing services under this Agreement

Setting your compensation at a level high enough to cover your expenses is simple and safe. On the practical side, it frees

you from having to keep records of your expenses. Keeping track of the cost of every phone call or photocopy you make for a client can be a real chore and may be more trouble than it's worth. However, if a project will involve expensive traveling, you may wish to separately bill the client for the cost.

Covering your own expenses will also help bolster your status as an IC. In the recent past, the IRS viewed the payment of a worker's expenses by a client as a sign of employee status. Although the agency now downgrades the importance of this factor, it's not entirely gone. You'll be on solid ground if you don't ask the client to reimburse you for expenses.

Choose Alternative 2 if you are responsible for expenses.

Late Fees

Late payments by Client shall be subject to late penalty fees of ____ % per month or the maximum allowed under state law from the due date until the amount is paid.

Many developers charge a late fee if the client doesn't pay within the time specified in the development agreement or invoice. Charging late fees for overdue payments can get clients to pay on time. The late fee is normally expressed as a monthly interest charge—for example, 1% per month.

If you wish to charge a late fee, make sure it's mentioned in your agreement. You should also clearly state what your late fee is on all your invoices.

Materials

Client shall make available to Developer, at Client's expense, the following materials, facilities, and equipment:
_____ [LIST].
These items will be provided to Client by
_____ [DATE].

If the client will provide you with any materials or equipment, list them in this optional clause. If you need these items by a specific date, specify the deadline as well.

Changes in Project Scope

If Client wishes to implement major revisions after Client has already accepted Developer's work product following completion of any stage of development, Client shall submit to Developer a written proposal specifying the desired changes.

Developer will evaluate each such proposal at its standard rates and charges. Developer shall submit to Client a written response to each such proposal within ten working days following receipt thereof. Developer's written response shall include a statement of the availability of Developer's personnel and resources, as well as any impact the proposed changes will have on the contract price, delivery dates, or warranty provisions of this Agreement.

Client shall have ten business days from receipt of Developer's response to its proposal to accept or reject it in writing. If Client accepts Developer's response, Developer shall draft a written Contract Amendment Agreement to reflect the desired changes and acknowledge any effect of such changes on the provisions of this Agreement. The Contract Amendment Agreement shall be signed by authorized representatives of Client and Developer, whereupon Developer shall commence performance in accordance with it.

Should Client reject Developer's response to its proposal, Client will so notify Developer within ten working days of Client's receipt of the response. Developer will not be obligated to perform any services beyond those called for in this original Agreement.

It's quite common in the course of website development for the client to wish to make changes—adding new features and/or deleting others. Of course, any changes to the specifications or any other provision of the contract should be in writing and signed by both parties to be effective.

Major changes in the scope of the project may greatly increase—or decrease—the amount of work the developer has to do. If the developer is paid a fixed fee, it is only fair that its compensation should be increased or decreased to reflect the change in the workload. This usually is not an issue where the developer is paid by the hour; but if there is a cap on the total hourly compensation to be paid, the cap may have to be increased.

Changes in the scope of the project may also require changes in proposed delivery dates, and perhaps in the contract's warranty provisions.

This provision sets forth a procedure for the parties to follow if the client wants to change the specifications or other parts of the development plan. First, the client must submit a written proposal to the developer

showing the desired changes. The developer then responds to this proposal in writing, stating, among other things, what impact the desired changes will have on the contract price and delivery schedule. If the client wants to go ahead with the changes, it submits a "Development Plan Modification Agreement" specifying all the agreed-upon changes and their effect on the provisions of the Agreement. The developer has ten days to accept or reject the Development Plan Modification Agreement.

In many instances, the developer, not the client, will wish to alter the specifications. This may be because the specifications contain an error, do not accurately reflect the client's true needs, or the project as originally agreed upon proves commercially unfeasible for a developer being paid a fixed fee. All such changes should be in writing and signed by both parties as required by the clause dealing with modifications to the agreement. (See the section General Provisions.")

Delays

Developer shall use all reasonable efforts to meet the delivery schedule set forth in Attachment 1. However, at its option, Developer can extend the due date for any deliverable by giving written notice to Client. The total of all such extensions shall not exceed ____ [NUMBER OF] days.

Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, provided that the delayed party has taken reasonable measures to notify the other of the delay in writing. The delayed party's time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control.

Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government after the date of the Agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war or terrorism, and epidemics. Failure of subcontractors and inability to obtain materials shall not be considered a condition beyond a party's reasonable control.

It is common for creation of new websites to take longer than originally anticipated. There are many reasons for this. Estimating how long it will take to create a new

website is an uncertain art at best. Delays may also result if the developer has staffing changes or increased demands on existing staff.

The first paragraph of this section is designed to give the developer some leeway in the delivery schedule. Any deadline can be extended by the developer by giving the client written notice. However, a cap is placed on the total of all the extensions. You need to decide how many days this cap should be.

Sometimes a project is delayed due to circumstances beyond the developer's control—for example, where an earthquake, fire, or other act of God or acts of war or terrorism destroy or severely damage the developer's office and equipment. In this event, it is only fair that the developer's delay be excused. A special provision (often called a “force majeure” clause) is commonly included in development contracts to excuse a party's nonperformance due to circumstances beyond its control. The second and third paragraphs of this section contain such a provision.

Ownership of Developer Content

Many website developers and clients harbor the misapprehension that, since the developer is being paid to create the site by the client, the client will automatically own all rights to it. This is not the case. Absent a written contract transferring ownership from the developer to the Client, the developer will most likely own the copyright in

anything it creates for the client (unless the developer is considered the client's employee; see Chapter 11).

One of the most important functions of a website development agreement is to establish exactly who will own the intellectual property rights to content to be created. This is often one of the most hotly-contested issues between the developer and client. Ownership rules for intellectual property are covered in detail in Chapter 11. This section focuses on how to handle these issues in a website development agreement.

Two ownership alternatives are provided:

- sole ownership by the client; and
- ownership by developer with a nonexclusive license to client.

Alternative 1: ownership by client

Developer assigns to Client all right, title, and interest in the copyrights in Developer Content, including copyright in the Site's compilation or collective work and in the derivative copyrights of such works. Developer will sign any further documents reasonably requested by Client to put into effect the assignment of these rights.

Because they are paying the developer to create the website, some clients insist on receiving sole ownership of what the developer creates. The following clause grants all ownership rights in the Developer Content to the client, with no restrictions.

Alternative 2: ownership by developer

Developer shall retain all copyright, patent, trade secret, and other intellectual property rights Developer may have in Developer Content. Subject to payment of all compensation due under this Agreement, Developer grants Client a nonexclusive, nontransferable, royalty-free license to use Developer Content. This license shall authorize Client to:

- operate the Site on its host server;
- update, revise, or republish the Site; and
- advertise and promote the Site.

Under this alternative, the developer retains ownership of all the Developer Content and gives the client only a nonexclusive license to use it. This means that the developer is free to license the content to anyone else, including the client's competitors. This is the most favorable ownership arrangement for the developer.

Ownership of Developer Tools

Client acknowledges that Developer owns or holds a license to use and sublicense various development or authoring tools it uses to create websites for its clients. By way of example, such tools may include, but are not limited to, such items as: HTML code, Java code, Java applets, subroutines, search engines, and toolbars for maneuvering between pages. Such material shall be referred to as "Developer's Tools." Developer Tools include, but are not limited to, those items identified in Exhibit ____, attached to and made a part of this Agreement.

Developer retains all right, title, and interest, including all copyright, patent rights, and trade secret rights in Developer Tools. Subject to full payment of the fees due under this Agreement, Developer grants Client a nonexclusive, perpetual worldwide license to use the Developer Tools to operate the Site and for all updates and revisions thereto. However, Client shall make no other commercial use of Developer Tools without Developer's written consent.

A website developer will normally bring to the project various development tools, programs, subroutines, and other programs, data, and materials. One term for these items is "Developer Tools." It's quite possible that Developer Tools may end up in the final product. For example, this may include HTML code, Java code, Java applets,

subroutines, search engines, and toolbars for maneuvering between pages.

If the developer transfers complete ownership of the website to the client, the client also may end up owning Developer Tools. Such an arrangement would prohibit the developer from using these materials in other projects without obtaining the client's permission (and perhaps paying a fee). A developer is usually well-advised to avoid this problem by making sure the agreement provides that the developer retain all ownership rights in Developer Tools. In this event, the agreement also should give the client a nonexclusive license to use the Developer Tools included in the client's website.

This provision permits the client to use the Developer Tools to operate and update the site, but keeps ownership in the hands of the developer. The developer should prepare a separate exhibit that identifies the Developer Tools in as much detail as possible.

Website Credits and Links

Developer can:

- ☐ state on the Site that Developer developed the Site;
- ☐ place hypertext links on Client's Site to Developer's website; or
- ☐ place hypertext links on Developer's website to Client's Site as an example of Developer's services.

Most website developers obtain some form of credit on the completed site. Obviously, this type of exposure could lead to more jobs for the developer. The developer can even have the client provide a link from its site to the developer's own site. Our form includes three credit and link options you can obtain from the client. Simply check the boxes for the ones that you agree on.

Site Hosting

Client has selected an Internet service provider to host its completed Site. While the Site is under construction and until final payment is received by Developer, Developer will host the Site pages as they are constructed in a special directory on its Web space at: _____ [URL]. If the Site is not completed by the completion date set forth in Attachment 1, and if the cause of the delay is not attributable to Developer, Client agrees to pay Developer \$_____ per month for hosting the Site on Developer's Web space. Client will continue to pay Developer for hosting the Site at this rate until the Site is installed on Client's own Web space. This monthly rate shall be prorated if the Site is installed on Client's Web space before the end of any monthly period.

This Agreement contemplates that the Client will find its own ISP to host the completed website. This clause provides that you will host the site on your own website while it's being developed. However, if the site is not completed by the date provided in the agreement, and the delay is not yours, the client will pay you each month for hosting the site until it's completed and moved to the client's chosen ISP. You must state in this clause how much you will charge the client per month for hosting the site.

Domain Name

Developer has no legal or financial interest in the domain name chosen by Client for the site.

[OPTIONAL:] If requested by Client, Developer will cooperate with Client in registering the domain name with a domain name registry chosen by Client. Client shall bear all expenses incurred in registering the domain name.

This clause provides that the developer will have no ownership or other interest in the Site domain name. The optional clause provides that the developer will help the client register the domain name—but at the client's expense.

Developer Representations and Warranties

Warranties and representations are statements and promises that you make regarding your services. They give the client a legal basis for suing you if something goes wrong after your services are completed. For example, if you warrant (promise) that the website will meet all the contract specifications and operate as intended, and it doesn't, you'll be responsible for fixing it or paying the cost of getting it fixed. If you don't, the client can sue you for breach of warranty.

Clients usually expect website developers to warrant their work. However, it's in the developer's best interest to provide as few warranties as possible or even no warranties at all. Remember, the more promises you make about your services the more grounds the client will have to sue you for breach of warranty if something goes wrong.

Alternative 1: disclaimer of all warranties

THE DEVELOPER CONTENT FURNISHED UNDER THIS AGREEMENT IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY; INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NOR ARE THERE ANY WARRANTIES CREATED BY A COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. DEVELOPER DOES NOT WARRANT THAT THE OPERATION OF THE SITE WILL BE CONTINUAL, UNINTERRUPTED, OR ERROR- FREE. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR DEVELOPER CONTENT.

There is no requirement in most states that you provide any warranties at all. Your services may be provided "as is"—meaning you make no warranties at all. While an "as is" statement will protect you from many types of claims, it won't protect you from charges of outright fraud (if you actually lied to the client). To be effective, "as is" statements must be "conspicuous"—for instance, printed in boldface capitals and large type—so they won't be overlooked by the client (no proverbial "fine print").

Alternative 2: providing express warranties

Developer represents and warrants to Client that:

- Developer Content will substantially conform to all specifications set forth in this Agreement and its attachments upon delivery and for a period of _____ after delivery.
- Developer has obtained or will obtain all necessary and appropriate rights and licenses to use Developer Content for the Site. Upon request, Developer will provide Client with copies of clearances for any intellectual rights obtained from third parties in connection with the website.
- Developer will not engage in any defamatory, deceptive, misleading, or unethical practices that are or might be detrimental to Client or the Site.

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES GRANTED BY DEVELOPER. DEVELOPER DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. [END ALTERNATIVE 2]

It is reasonable for the client to expect the developer to stand behind its work. Website developers typically give the client certain express warranties and disclaim any other warranties. The parties need to negotiate exactly what type of express warranties the developer will make. Naturally, the client wants the developer's warranties to be as expansive as possible, while the developer wishes them to be narrowly drawn. A compromise must be reached.

Alternative 2 contains the following express warranties commonly found in website development agreements. Include whichever warranties are desired.

- **Warranty of Performance:** Under this warranty, the developer guarantees that the Developer Content will substantially conform to all the contract specifications. "Substantial conformance" means that trivial variations from the specifications will not violate the warranty.

This warranty is usually limited in time, to anywhere from 90 days to one year. During the warranty term, the developer is required to correct any substantial deviations from the specifications and modify the Developer Content as necessary, free of charge.

- **Rights and clearances:** This warranty provides that you'll obtain all necessary rights and licenses to use the material you provide for the Site. Upon request, you must give the client copies of these clearances.
- **Unethical practices:** This warranty provides that you will not engage in any defamatory, deceptive, misleading,

or unethical practices that are or might be detrimental to the client or the site.

Intellectual Property Infringement Claims

“Intellectual property” is a catch-all term that includes copyrights, patents, trade secrets, and trademarks. (See Chapter 2 for a detailed discussion.) Most website development agreements contain some kind

of warranty against intellectual property infringement. The extent of such a warranty is subject to negotiation.

In this highly litigious world, intellectual property infringement is an issue the developer must think about carefully.

In some cases, the developer may even choose to lower its price or make other concessions to the client to avoid making a broad warranty of noninfringement. Three alternative warranty provisions are provided in the agreement.

Alternative 1: limited warranty against infringement

Developer warrants that Developer will not knowingly infringe on the copyright or trade secrets of any third party in performing services under this Agreement. To the extent any material used by Developer contains matter proprietary to a third party, Developer shall obtain a license from the owner permitting the use of such matter and granting Developer the right to sublicense its use. Developer will not knowingly infringe upon any existing patents of third parties in the performance of services required by this Agreement, but Developer MAKES NO WARRANTY OF NONINFRINGEMENT of any United States or foreign patent.

[OPTIONAL—INDEMNIFICATION FOR CLAIMS:] If any third party brings a lawsuit or proceeding against Client based upon a claim that the Developer Content breaches the third party’s patent, copyright, or trade secrets rights, and it is determined that such infringement has occurred, Developer shall hold Client harmless against any loss, damage, expense, or cost, including reasonable attorney fees, arising from the claim.

This indemnification obligation shall be effective only if:

- the third-party intellectual property rights involved were known to Developer prior to delivery of the Developer Content;
- Client has made all payments required by this Agreement;
- Client has given prompt notice of the claim and permitted Developer to defend; and
- the claim does not result from Client’s modification of Developer Content.

To reduce or mitigate damages, Developer may at its own expense replace the Developer Content with noninfringing content.

In this clause the developer warrants that it will not knowingly violate the copyright or trade secrets rights of any third party. However, no warranty is made as to patent infringement. This is because it is very difficult for a developer to know for sure whether its content might violate a patent, primarily because many pending patent applications are kept secret. Instead, the developer simply promises that, to the best of the developer's knowledge, the Developer Content will not infringe any existing patent.

Some clients absolutely insist that the developer indemnify (repay) them if a third party brings a lawsuit claiming the Developer Content infringed on the party's intellectual property rights. An optional indemnification provision is provided here. It is as narrowly drafted as possible. The developer must indemnify the client only if the third-party intellectual property rights involved were known to the developer prior to delivery of the content.

Alternative 2: "no-knowledge" representation

Developer represents, BUT DOES NOT WARRANT, that to the best of its knowledge the Developer Content delivered to Client under this Agreement will not infringe any valid and existing intellectual property right of any third party.

Even better for the developer is to provide no warranty of noninfringement at all, and instead extend the "no-knowledge representation" to copyrights and trade secrets as well as patents.

Alternative 3: no warranties or representations

THE DEVELOPER CONTENT FURNISHED UNDER THIS AGREEMENT IS PROVIDED WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS AGAINST INFRINGEMENT, AND DEVELOPER SHALL NOT INDEMNIFY CLIENT AGAINST INFRINGEMENT OF ANY PATENTS, COPYRIGHTS, TRADE SECRETS, OR OTHER PROPRIETARY RIGHTS.

Best of all, from the developer's point of view, is a provision in which the developer states that it makes no warranties or representations of any kind regarding intellectual property infringement and will not indemnify the client if an infringement claim is made (see discussion of indemnification below). If you use this clause, it should be printed in boldfaced, capital letters.

Limits on Developer's Liability

Limitation of Developer's Liability to Client:

(a) In no event shall Developer be liable to Client for lost profits of Client, or special or consequential damages, even if Developer has been advised of the possibility of such damages.

(b) Developer's total liability under this Agreement for damages, costs, and expenses, regardless of cause, shall not exceed the total amount of fees paid to Developer by Client under this Agreement [OPTIONAL: "or \$[AMOUNT], whichever is greater"].

(c) Developer shall not be liable for any claim or demand made against Client by any third party except to the extent such claim or demand relates to copyright, trade secret, or other proprietary rights, and then only as provided in the section of this Agreement entitled Intellectual Property Infringement Claims.

(d) Client shall indemnify Developer against all claims, liabilities, and costs, including reasonable attorney fees, of defending any third-party claim or suit arising out of the use of the Developer Content provided under this Agreement, other than for infringement of intellectual property rights. Developer shall promptly notify Client in writing of any third-party claim or suit and Client shall have the right to fully control the defense and any settlement of such claim or suit.

This provision, which is optional, limits the developer's total liability to the client if something goes wrong with the developer's work.

No liability for consequential damages

Incidental or consequential damages include lost profits or other economic damages arising from a malfunction when the developer had reason to know that such losses could occur if the website malfunctioned. This could include, for example, the value of online sales lost if a client's website breaks down. Such damages can be substantial. This clause eliminates liability for such damages.

Limit on developer's liability to client

This clause limits the developer's potential liability to the client to a specified amount. A typical liability limit is the amount paid the developer by the client. This amounts to a money-back guarantee for the client, while getting the developer off the hook for a potentially much larger liability. If desired, a liability standard not based on the contract price can be set. Obviously, such a provision highly favors the developer.

Developer's liability for third-party claims

A third party is a person or company other than the client. It is possible that the developer could end up getting sued by a third party.

EXAMPLE: Charlie Client hires the Acme Stock Photo Agency to provide Dave Developer with photos for the website Developer is creating for Client. Client fails to pay Acme. Acme sues both Client and Developer for payment.

This clause provides that the developer is not liable for any claim made against the client by any third party (other than for intellectual property infringement if it is providing a warranty against infringement).

Indemnification of developer for third-party claims

This clause requires the client to indemnify you if you are sued by a third party (someone other than the client). This means the client must pay your legal expenses and any damages awarded against you.

Client Representations and Warranties

Client represents and warrants to Developer as follows:

- Client has the authority to enter into and perform its obligations under this Agreement;
- Client has or will obtain all necessary and appropriate rights and licenses to grant the license to Developer to use Client Content for the Site; and
- Client has or will obtain any authorizations necessary for hypertext links from the Site to any other third-party websites.

Client will indemnify Developer from any third-party claims resulting in losses, damages, liabilities, costs, charges, and expenses, including reasonable attorney fees, arising out of any breach of any of Client's representations and warranties contained in this Agreement. For such indemnification to be effective, however, Developer must give Client prompt written notice of any such claim and provide Client such reasonable cooperation and assistance as Client may request in the defense of such suit. Client will have sole control over any such suit or proceeding.

The client should provide the developer with certain warranties. This clause provides that:

- The client has the authority to enter into and perform its obligations under this Agreement—this means the person who signs the Agreement has the legal authority to do so on the client's behalf;
- The client has or will obtain all necessary rights and licenses for any content it provides the developer for the site; and
- the client has or will obtain any authorizations necessary for hypertext links from the site to any other third-party websites.

The clause also requires the client to indemnify the developer if any of these warranties are breached.

Confidentiality

Confidentiality: During the term of this Agreement and for ____ [6 months to 5 years] afterward, Developer will use reasonable care to prevent the unauthorized use or dissemination of Client's confidential information. Reasonable care means at least the same degree of care Developer uses to protect its own confidential information from unauthorized disclosure.

Confidential information is limited to information clearly marked as confidential, or disclosed orally that is treated as confidential when disclosed and summarized and identified as confidential in a writing delivered to Developer within 15 days of disclosure.

Confidential information does not include information that:

- the Developer knew before Client disclosed it;
- is or becomes public knowledge through no fault of Developer;
- Developer obtains from sources other than Client who owe no duty of confidentiality to Client; or
- Developer develops independently.

Since website developers often have access to their clients' valuable confidential information, clients often seek to impose confidentiality restrictions on them. It's not unreasonable for a client to want you to keep its secrets away from the eyes and ears of competitors. Unfortunately, however, many of these provisions are worded so broadly that they can make it difficult for you to work for other clients without fear of violating your duty of confidentiality.

If, like most Web developers, you make your living by performing similar services for many firms that may compete with each other, insist on a confidentiality provision that is reasonable in scope and defines precisely what information you must keep confidential. Such a provision should last for only a limited time—five years at the most.

The confidentiality provision in this agreement prevents the unauthorized disclosure by the developer of any written material of the client marked confidential or information disclosed orally that the client later writes down, marks as confidential,

and delivers to you within 15 days. This enables the developer to know for sure what material is, and is not, confidential.

The clause also makes clear that the developer does not have any duty to keep confidential material that does not qualify as a trade secret, is legitimately learned from persons other than the client, or is independently developed.

Term of Agreement

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

This clause provides that the term of the Agreement runs from the date it is executed (signed by both parties) until full performance or earlier termination or cancellation.

Termination of Agreement

Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of 30 days after written notice of such breach is sent to the other party.

If Developer terminates this Agreement because of Client's default, all of the following shall apply:

- (a) Client shall immediately cease use of the Developer Content;
- (b) Client shall, within ten days of such termination, deliver to Developer all copies and portions of the Developer Content and related materials and documentation in its possession furnished by Developer under this Agreement;
- (c) All amounts payable or accrued to Developer under this Agreement shall become immediately due and payable; and
- (d) All rights and licenses granted to Client under this Agreement shall immediately terminate.

[OPTIONAL:] This Agreement may be terminated by Client for its convenience upon thirty (30) days' prior written notice to Developer. Upon such termination, all amounts owed to Developer under this Agreement for accepted work shall immediately become due and payable and all rights and licenses granted by Developer to Client under this Agreement shall immediately terminate.

The language governing how the agreement may end is very important to both parties. The provision in this agreement is fairly standard. It permits either party to terminate the agreement if the other materially breaches any of its contractual obligations and fails to remedy the breach within 30 days. A "material" breach means a breach that is serious, rather than minor or trivial. Missing a deadline by one day is not "material"; missing it by three months is.

For developers, the material breach most likely to result in termination is the client's failure to pay the developer in a timely fashion. If the developer terminates the agreement because of the client's default (usually because the client has failed to pay the developer), the client should return any Developer Content or other materials received from the developer and should pay the developer for the work it has done.

Optional provision—early client

termination: The client may want the option to terminate the agreement at its convenience if it decides for some reason it doesn't want to go through with the project. In this event, the client should have to pay the developer all amounts due for accepted work and relinquish any rights in the developer content.

Taxes

The charges included here do not include taxes. If Developer is required to pay any federal, state, or local sales, use, property, or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to Client. Developer shall not pay any interest or penalties incurred due to late payment or nonpayment of such taxes by Client.

Whether or not the developer is required to collect sales or other taxes, the following provision should be included in the agreement, making it clear that the client will have to pay these and similar taxes. States constantly change their sales tax laws and more and more are beginning to look at services as a good source of sales tax revenue. So this provision could come in handy in the future even if the developer doesn't really need it now.

Developer an Independent Contractor

Developer is an independent contractor, and neither Developer nor Developer's staff is, or shall be deemed, Client's employees. In its capacity as an independent contractor, Developer agrees and represents, and Client agrees, as follows:

[INCLUDE ALL PROVISIONS THAT APPLY]

- (a) Developer has the right to perform services for others during the term of this Agreement subject to noncompetition provisions set out in this Agreement, if any.
- (b) Developer has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.
- (c) Developer has the right to perform the services required by this Agreement at any place or location and at such times as Developer may determine.
- (d) Developer will furnish all equipment and materials used to provide the services required by this Agreement.
- (e) The services required by this Agreement shall be performed by Developer, or Developer's staff, and Client shall not be required to hire, supervise, or pay any assistants to help Developer.
- (f) Developer is responsible for paying all ordinary and necessary expenses of its staff.
- (g) Neither Developer nor Developer's staff shall receive any training from Client in the professional skills necessary to perform the services required by this Agreement.
- (h) Neither Developer nor Developer's staff shall be required to devote themselves full-time to the performance of the services required by this Agreement.
- (i) Client shall not provide insurance coverage of any kind for Developer or Developer's staff.
- (j) Client shall not withhold from Developer's compensation any amount that would normally be withheld from an employee's pay.

One of the most important functions of the agreement is to help establish that the developer is not the client's employee. A developer will be considered the client's employee if the client has the right to control the developer. This will cause problems not only for the client, but for the developer as well.

A development agreement that indicates a lack of control on the part of the hiring firm will contribute to a finding of independent contractor status. But such an agreement will not be determinative in and of itself. Simply signing a piece of paper will not make a developer an independent contractor. The agreement must reflect reality—that is, the developer must actually not be controlled on the job by the client.

The language in this clause addresses most of the factors the IRS and other agencies consider in measuring the degree of control of the hiring firm. All provisions show that the hiring firm lacks the right to control the manner and means by which the developer will perform the agreed-upon services.

Include all of provisions a-j that apply. The more that apply, the more likely that the developer will be viewed as an independent contractor.

Optional Provision: Nonsolicitation of Developer's Employees

Client agrees not to knowingly hire or solicit Developer's employees during performance of this Agreement and for a period of [TIME PERIOD, USUALLY SIX MONTHS TO TWO YEARS] after termination of this Agreement without Developer's written consent.

Some Web developers fear that the client will hire away a star design or other key employee and do future work on website updates and enhancements in-house. This optional provision is designed to prevent this. It may give the developer some peace of mind.

Designated Representatives

Each party will designate a representative to receive and send materials, approvals, comments, invoices, and other materials discussed in this agreement.

Developer's Representative will be _____, who can be contacted by email at _____ and by telephone at _____.

Client's Representative will be _____, who can be contacted by email at _____ and by telephone at _____.

Insert the name and contact information for each party's designated representative.

Website Maintenance and New Development

Developer will maintain the Site or provide additional development after its launch according to the terms stated in Attachment 2.

If the client is not tech savvy or doesn't have the time or inclination to do it itself, it will need a person or firm on tap to keep the site running properly and to assist in keeping it up to date. One obvious option is to make the developer responsible for these ongoing chores. If so, you can include these arrangements in your development contract. We've provided an optional contract clause here for you and the client to consider.

Disputes

Arbitration and mediation are referred to as alternative dispute resolution (ADR) procedures because they offer ways to end squabbles without litigation. These ADR procedures have become popular over the last decade because they avoid the court system and can save time and money.

However, taking a dispute out of the court system may not always be the right decision for you. In arbitration, for example, you'll be bound by a decision from which there is no means of appeal. Our agreement gives you three alternatives on how to resolve disputes; you must choose one:

Alternative 1: litigation

If a dispute arises, either party may take the matter to court.

Mediation and Possible Litigation. If a dispute arises, the parties will try in good faith to settle it through mediation conducted by: _____
[NAME] OR a mediator to be mutually selected.

The first alternative calls for court litigation—meaning there will be no mediation or arbitration unless the parties change their minds and agree to it later.

Alternative 2: Mediation

Each party will cooperate fully and fairly with the mediator and will attempt to reach a mutually satisfactory compromise to the dispute. If the dispute is not resolved within 30 days after it is referred to the mediator, either party may take the matter to court.

The second alternative requires mediation, with the costs of the mediator to be borne equally by developer and client. If the mediation fails, the matter may be taken to court.

Alternative 3: Mediation and arbitration

The parties will share the costs of the mediator equally. Each party will cooperate fully and fairly with the mediator and will attempt to reach a mutually satisfactory compromise to the dispute.

If the dispute is not resolved within 30 days after it is referred to the mediator, it will be arbitrated by: _____

[NAME] OR an arbitrator to be mutually selected. Judgment on the arbitration award may be entered in any court that has jurisdiction over the matter. The arbitrator will allocate costs of arbitration, including attorney fees.

The third alternative calls first for mediation, with the costs to be borne equally. If the mediation fails, the parties must take the matter to binding arbitration. You give up your right to go to court under this alternative.

Mediation and Arbitration Primer

Mediation and arbitration are not the same. It's important to understand the differences.

Mediation. In mediation, a neutral facilitator (the mediator) helps the parties resolve their dispute. Both sides sit down with the mediator and tell their stories. The mediator sorts out the issues and may suggest ways to resolve the dispute. If the two parties agree to a solution, they sign a settlement agreement. Because it's not binding and because it's less expensive than litigation or arbitration, some businesses prefer mediation, at least as a first step.

Mediation is the most inexpensive and peaceable method of solving problems. You can arrive at a settlement rather than being told how to resolve the dispute by an arbitrator or judge. It's less likely to exacerbate bad feelings between the parties, as lawsuits inevitably do.

By itself, however, mediation may not be enough because it doesn't force the parties to end the dispute. If you can't resolve the dispute with mediation, you must find some binding method of ending the battle, either arbitration or litigation.

Arbitration. Arbitration is like going to court, but with less formality and expense. Instead of filing a lawsuit, the parties hire one or more arbitrators to evaluate the dispute and make a determination. The arbitration process can be relatively simple, although it usually requires some document preparation and a hearing. You don't need a lawyer to represent you, but many businesses do prefer a lawyer's help in presenting the strongest legal arguments.

Occasionally, the parties may agree that an arbitrator's determination will be advisory (in which case either party can disregard it and file a lawsuit). Much more often, however, it's binding. A binding decision can be enforced by a court and can't be overturned unless something especially unfair happened—for example, the arbitrator ruled against you and you later learn that the arbitrator owned stock in your client's company.

To arbitrate a dispute, both parties must consent. Unfortunately, when you are in the midst of a dispute, it's hard to get the parties to agree to anything. So, the best method of guaranteeing arbitration is to include an arbitration provision in your contracts.

Arbitration is not, however, always preferable to litigation. Even though arbitration is quicker than going through a trial, it may take several weeks to initiate proceedings. By contrast, if a developer goes to court, it may obtain some relief—like a temporary restraining order—in less time than it takes to initiate arbitration. For this reason, you need to weigh the potential cost of litigation versus the speed of obtaining relief. For a small developer with limited resources, arbitration is usually the preferable route.

Finding a Mediator or Arbitrator. Many associations and companies offer mediation and arbitration services. The best-known organization is the American Arbitration Association (AAA). The AAA has offices in every state and can provide mediators and arbitrators in most areas. If you'd like to check the availability of AAA arbitrators or mediators in your area before using one of these clauses, visit www.adr.org.



RESOURCE

Nolo's How to Mediate Your Dispute: Find a Solution Quickly and Cheaply Outside the Courtroom, by Peter Lovenheim, provides more information on mediation and arbitration.

Attorney Fees and Expenses

If there is litigation, the prevailing party may collect from the other party its reasonable costs and attorney fees incurred in enforcing this Agreement.

What if the other party breaches the agreement and you're forced to sue? The rate for business lawyers is \$200 to \$400 an hour. A lawsuit can cost \$5,000 to \$50,000 and even more, depending on the length of the suit and the subject matter. The amount you pay lawyers could quickly overshadow any amount you might win.

In the United States (unlike many other countries), the loser of a lawsuit isn't required to pay the winner's attorney fees. In other words, each party has to pay its own lawyer, regardless of how the suit turns out. There are two exceptions to this rule:

- a court may award fees if a specific law permits it; and
- a court must award attorney fees if a contract provides for it.

In most situations, you only get your attorney fees paid if you use a provision like

the one in our agreement. Because lawyers are so expensive, having an attorney fee provision—that is, having each side afraid it will get stuck paying someone's attorney fees—can prove crucial to ending a dispute.

This attorney fees provision is mutual—that is, whoever wins the lawsuit is awarded attorney fees. This is fair, and encourages the quick resolution of lawsuits. We discourage a provision that allows only one party to receive attorney fees. No matter which side they favor, one-sided provisions create an uneven playing field for resolving disputes. One state (California) recognizes this unfairness and automatically converts a one-way attorney fees contract provision into a mutual one.

Survival

The provisions of Sections 16 through 18 will survive any termination of this Agreement.

This clause ensures that Sections 16-18 dealing with the developer's liability and the client's warranties will survive any early termination of the agreement.

General Provisions

Following are several provisions that are customarily lumped together at the end of a development agreement. This does not mean they are unimportant.

Complete agreement

This Agreement, together with all exhibits, appendices, or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements, and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices, or other materials, the Agreement shall take precedence.

This clause helps make it clear to a court or arbitrator that the parties intended the contract to be their final agreement. A clause such as this helps avoid claims that promises not contained in the written contract were made and broken. The developer should make sure that all documents containing any of the client's representations upon which the developer is relying are attached to the agreement as exhibits. If they aren't attached, they likely won't be considered to be part of the agreement.

Modifications

Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

This clause, which is very important, provides that any changes to the agreement must be in writing and agreed to by both parties to be effective. This provision protects both parties; reducing all modifications to writing lessens the possibility of misunderstandings. In addition, oral modifications may not be legally binding.

Contract Changes in the Real World

In the real world, people make changes to their contracts all the time and never write them down. If the changes are very minor, this might not pose a problem. But be aware that a contract alteration might not be legally binding if it is not written down. And, of course, if a dispute develops, the lack of a writing will make it difficult to prove what you actually agreed to.

If you agree to a minor contract change (over the phone, for example) and don't want to go to the trouble of dealing with a formal signed contract modification, at least send a confirming letter to the other party setting forth the gist of what you've agreed to. This isn't as good as a signed contract modification, but it will be helpful if a dispute later develops.

Applicable law

This Agreement will be governed by the laws of the State of [NAME APPLICABLE STATE]

This clause specifies which state law governs the contract. This should be the state in which the developer does business or is incorporated.

Notices

All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:

- When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement;
- Three days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement; or
- When sent by fax or electronic mail. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.

When you want to do something important involving the agreement—terminate it, for example—you need to tell the client about it. This is called giving notice. This provision gives you several options for providing the client with notice: by personal delivery, by mail, or by fax or electronic mail followed by a confirming letter.

If you give notice by mail, it is not effective until three days after it's sent. For example, if you want to end the agreement on 30 days notice and mail your notice of termination to the consultant, the agreement will not end until 33 days after you mailed the notice.

No agency

Nothing contained herein will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise between the parties.

This clause helps you to make sure that the developer and client are separate legal entities, not partners or coventurers. If a client is viewed as a developer's partner, the developer will be liable for its debts and the client will have the power to make contracts that obligate the developer to others without the developer's consent.

Assignment

The rights and obligations under this Agreement are freely assignable by either party. Client shall retain the obligation to pay if the assignee fails to pay as required by this Agreement.

An assignment is the process by which rights or duties under a contract are transferred to someone else. For example, you may assign your duty to perform services for the client to someone else. This clause gives both parties an unfettered right to assign their rights or obligations.

Successors and assigns

This agreement binds and benefits the heirs, successors, and assigns of the parties.

It's possible that either party will be succeeded by someone else. For example, a sole proprietor's heirs may inherit the business. In that case, you'd want to make sure that the heirs are bound by all the requirements of the agreement—such as confidentiality requirements. In other cases, a party may assign its rights to another company. For example, the other business may be sold to another company. Our clause says that in either case, the new parties will get the benefits of the agreement—and will be bound by its

requirements. If that's not what you want to happen, you can customize the agreement.

Severability

If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement will be interpreted so as best to carry out the parties' intent.

This clause—which lawyers call a severability clause—provides that if you wind up in a lawsuit over the agreement and a court rules that one part of the agreement is invalid, that part can be cut out but the rest of the agreement will remain valid. If you don't include a clause like this and some portion of your agreement is deemed invalid, then the whole agreement may be canceled.

Signatures

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

The end of the main body of the agreement should contain spaces for the parties to sign. See Chapter 1 for a detailed discussion of how to sign agreements.

Attachments

Make sure that all the attachments are attached to all copies of the agreement. Each attachment should be consecutively numbered or lettered (“A,B,C” or “1,2,3”).

Also, the references to the attachments in the main body of the agreement should match the actual attachments. The attachments to the agreement will include:

Attachment 1: development stages and due dates

ATTACHMENT 1: DEVELOPMENT STAGES AND DUE DATES		
Development Services shall consist of four stages:		
Stage	Services	Due Date
Concept	The parties will discuss and agree upon the basic concept for the Client website and Developer shall prepare a written summary of the basic elements of the website’s functionality and appearance.	Within ____ days of the effective date.
Design	The parties will discuss and agree upon the design of the Client website and Developer shall prepare a detailed summary of the proposed appearance, operation, and functionality, including a list of all necessary software and materials necessary to launch the Site.	Within ____ days of the approval of the Concept Stage.
Initial Development	During Initial Development, Developer shall prepare the following Web pages for the Site _____ and demonstrate the following functionality for the Site _____.	Within ____ days of the approval of the Design Stage.
Final Developmen	Developer will complete all requirements for the Site and host it in a manner that Client can view it for a period of at least ____ days.	Within ____ days of the approval of the Initial Development Stage.

**Attachment 2: optional maintenance
and new development agreement**

Maintenance and New Development

Following launch of the Site, Developer will provide the following services at the following rates:

Service	Rate
Technical support necessary to maintain reliable performance of the features and functionality of the Site	_____ per mon
Consulting and new development services	_____ per hour

Client will pay Developer within 30 days of receiving Developer's invoice. Client grants to Developer a license to reproduce and modify the Site content to provide these services.

**Attachment 3: developer's
list of developer tools**

Developer Tools include, but are not limited to, the following: