Free web design and development agreement: cover

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Web design and development agreement

DATE

*[Date]*

PARTIES

1. [*[INDIVIDUAL NAME]* of *[address]*] OR [*[COMPANY NAME]*, a company incorporated in [England and Wales] (registration number *[registration number]*) having its registered office at *[address]*] OR [*[PARTNERSHIP NAME]*, a partnership established under the laws of [England and Wales] having its principal place of business at *[address]*] (the "**Developer**"); and

2. [*[INDIVIDUAL NAME]* of *[address]*] OR [*[COMPANY NAME]*, a company incorporated in [England and Wales] (registration number *[registration number]*) having its registered office at *[address]*] OR [*[PARTNERSHIP NAME]*, a partnership established under the laws of [England and Wales] having its principal place of business at *[address]*] (the "**Customer**").

AGREEMENT

1. Definitions

1.1 In this Agreement[, except to the extent expressly provided otherwise]:

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Assignment Works**" means [those elements of the Website and the Documentation[ (excluding [the Third Party Materials and the Customer Materials])] the rights in which are to be assigned (rather than licensed) by the Developer to the Customer under Clause 7, as specified in Paragraph 2 of Schedule 1 (Web design and development particulars)] OR [the visual appearance of the Website (including page layouts, artwork, photographs, logos, graphics, animations, video works and text comprised in the Website) together with all mark-ups and style sheets comprised in or generated by the Website] OR [*[insert alternative definition]*];

"**Charges**" means the following amounts:

(a) [the amounts specified in Paragraph 6 of Schedule 1 (Web design and development particulars)];

(b) [such amounts as may be agreed in writing by the parties from time to time]; and

(c) [amounts calculated by multiplying the Developer's [standard time-based charging rates (as notified by the Developer to the Customer before the date of this Agreement)] by the time spent by the Developer's personnel performing [the Services] (rounded [down by the Developer to the nearest quarter hour])];

*[additional list items]*

"**Customer Materials**" means [all works and materials supplied by or on behalf of the Customer to the Developer for incorporation into or integration with the Website, or for use in connection with the Services];

"**Developer Credit**" means [a textual credit for the Developer incorporating a link to the website of the Developer, in a form agreed by the parties acting reasonably];

"**Development Services**" means [the design and development of the Website by the Developer];

"**Documentation**" means [the documentation for the Website produced by the Developer and delivered or made available by the Developer to the Customer];

"**Effective Date**" means [the date of execution of this Agreement];

"**Force Majeure Event**" means [an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars]);

"**Intellectual Property Rights**" means [all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)];

"**Licensed Works**" means the Website[ and the Documentation][ excluding [the Assignment Works, the Third Party Materials and the Customer Materials]];

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means [any services that the Developer provides to the Customer, or has an obligation to provide to the Customer, under this Agreement];

"**Source Code**" means [software code in human-readable form, including human-readable code compiled to create software or decompiled from software, but excluding interpreted code];

"**Term**" means [the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2];

"**Third Party Materials**" means the works and/or materials comprised in the Website[ excluding the Customer Materials], the Intellectual Property Rights in which are owned by a third party[, and which are specified in Paragraph 4 of Schedule 1 (Web design and development particulars) or which the parties agree in writing shall be incorporated into the Website];

"**Website**" means [the website developed or to be developed by the Developer for the Customer under this Agreement, as specified in Schedule 1 (Web design and development particulars), including all the Source Code for that website created by the Developer in the course of providing the Services];

"**Website Defect**" means a defect, error or bug in the Website having [an adverse effect] OR [a material adverse effect] on [the appearance, operation, functionality, security or performance of the Website][, but excluding any defect, error or bug caused by or arising as a result of:

(a) [any act or omission of the Customer or any person authorised by the Customer to use the Website];

(b) [any use of the Website contrary to the Documentation by the Customer or any person authorised by the Customer to use the Website];

(c) [a failure of the Customer to perform or observe any of its obligations in this Agreement]; and/or

(d) [an incompatibility between the Website and any other system, network, application, program, hardware or software not specified as compatible in the Website Specification]; and]

"**Website Specification**" means [the specification for the Website set out in Paragraph 1 of Schedule 1 (Web design and development particulars)][, as it may be varied by the written agreement of the parties from time to time].

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3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which this Agreement shall terminate automatically] OR [until *[event]*, upon which this Agreement shall terminate automatically], subject to termination in accordance with Clause 13 or any other provision of this Agreement.

4. Development Services

4.1 The Developer shall provide the Development Services to the Customer.

4.2 The Developer shall [ensure] OR [use all reasonable endeavours to ensure] OR [use reasonable endeavours to ensure] that the Development Services are provided in accordance with the timetable set out in Paragraph 5 of Schedule 1 (Web design and development particulars), and that [copies of the Website and Documentation are] delivered to the Customer[ [by means of a secure online file sharing system, on a USB memory stick or on optical disk]] in accordance with that timetable.

4.3 The Customer acknowledges that a delay in the Customer performing its obligations under this Agreement may result in a delay in the performance of the Development Services; and subject to Clause 12.1 the Developer will not be liable to the Customer in respect of any failure to meet the Development Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under this Agreement.

4.4 The Developer shall ensure that [the Source Code, and any interpreted code, comprised in the Website created by or on behalf of the Developer during the provision of the Development Services] is [written to a professional standard, conforms with any coding standards document agreed between the parties, and incorporates sufficient commentary to enable a competent third party developer to understand, adapt, maintain and update the code].

4.5 The Developer shall keep the Customer reasonably informed of the progress of the Development Services and, in particular, shall inform the Customer of any substantial obstacles or likely delays in the performance of the Development Services.

4.6 The Developer shall [during the course of the Development Services at the request of the Customer] [supply to the Customer] OR [make accessible to the Customer] [a current development version of the Website] for the purposes of [enabling the Customer to assess the progress of the Development Services and provide feedback to the Developer regarding the Website].

4.7 If this Agreement terminates [(for whatever reason)] before the delivery of the completed Website[ or Documentation] to the Customer, the Developer must within [14 days] following such termination deliver to the Customer [all work in progress towards] the Website[ and Documentation].

5. Customer obligations

5.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Developer, or procure for the Developer, such:

(a) [co-operation, support and advice];

(b) [information and documentation]; and

(c) [governmental, legal and regulatory licences, consents and permits],

 as are reasonably necessary to enable the Developer to perform its obligations under this Agreement.

5.2 The Customer must provide to the Developer, or procure for the Developer, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Developer to enable the Developer to perform its obligations under this Agreement.

6. Customer Materials

6.1 The Customer must supply to the Developer the Customer Materials specified in Paragraph 3 of Schedule 1 (Web design and development particulars), in accordance with the timetable specified in Paragraph 5 of Schedule 1 (Web design and development particulars).

6.2 The Customer hereby grants to the Developer a non-exclusive licence to [copy, reproduce, store, distribute, publish, export, adapt, edit and translate] the Customer Materials to the extent reasonably required for the performance of the Developer's obligations and the exercise of the Developer's rights under this Agreement[, together with the right to sub-license these rights to the extent reasonably required for the performance of the Developer's obligations and the exercise of the Developer's rights under this Agreement].

6.3 The Customer warrants to the Developer that [the Customer Materials] OR [the Customer Materials when used by the Developer in accordance with this Agreement] will not infringe the Intellectual Property Rights[ or other legal rights] of any person[, and will not breach [the provisions of any law, statute or regulation],] in [any jurisdiction and under any applicable law].

7. Intellectual Property Rights

7.1 The Developer hereby assigns to the Customer [with full title guarantee all of the Intellectual Property Rights] OR [all of its Intellectual Property Rights] in the Website[ and the Documentation][, whether those Intellectual Property Rights exist on the Effective Date or come into existence during the Term][, excluding [the Intellectual Property Rights in the Customer Materials and the Third Party Materials]]. This assignment is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals, and includes the right to bring proceedings for past infringements of the assigned rights. This assignment shall take effect [in respect of a work upon the delivery of that work to the Customer].

OR

7.1 The Developer hereby grants to the Customer [a worldwide, non-exclusive and non-expiring] licence to [copy, store, publish and otherwise use] the Website[ and the Documentation][ (excluding [the Third Party Materials and the Customer Materials])][ for the following purposes: *[identify purposes]*], providing the Customer must not: [sell, resell, rent, lease, supply, distribute or redistribute the Website; use the Website to create or operate any new website or web application (other than the Website itself); or alter, adapt or edit the Website]. This licence shall take effect [in respect of a work upon and from the delivery of that work to the Customer].

OR

7.1 The Developer hereby:

(a) assigns to the Customer [with full title guarantee all of the Intellectual Property Rights] OR [all of its Intellectual Property Rights] in the Assignment Works[, whether those Intellectual Property Rights exist on the Effective Date or come into existence during the Term]; this assignment is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals, and includes the right to bring proceedings for past infringements of the assigned rights; and

(b) grants to the Customer [a worldwide, non-exclusive and non-expiring] licence to [copy, store, publish and otherwise use] the Licensed Works[ for the following purposes: *[identify purposes]*],

 providing the Customer must not: [sell, resell, rent, lease, supply, distribute or redistribute the Licensed Works; use the Licensed Works to create any new website or web application (other than the Website itself); or alter, adapt or edit the Licensed Works]. This assignment and/or licence shall take effect [in respect of a work upon and from the delivery of that work to the Customer].

7.2 Subject to any express written agreement between the parties, the Developer shall ensure that the Third Party Materials are:

(a) [licensed to the Customer in accordance with the relevant licensor's standard licensing terms (which the Customer acknowledges may be open source or *Creative Commons* licensing terms)];

(b) [licensed to the Customer on reasonable terms notified by the Developer to the Customer];

(c) [sub-licensed by the Developer to the Customer on reasonable terms notified in writing by the Developer to the Customer]; or

(d) [sub-licensed by the Developer to the Customer on the basis of a non-exclusive, worldwide, perpetual and irrevocable licence to use the Third Party Materials in connection with the Website].

*[additional list items]*

7.3 To the maximum extent permitted by applicable law:

(a) the Developer irrevocably and unconditionally waives all moral rights (including rights of paternity and rights of integrity) in respect of the Website[ and the Documentation] to which the Developer may at any time be entitled; and

(b) the Developer undertakes to ensure that all individuals involved in the preparation of the Website[ and/or the Documentation] will irrevocably and unconditionally waive all moral rights (including rights of paternity and rights of integrity) in respect of the Website[ and/or the Documentation] to which they may at any time be entitled.

7.4 The Developer must[ use [reasonable endeavours] OR [best endeavours] to]:

(a) do or procure the doing of all acts; and

(b) execute or procure the execution of all documents,

 that the Customer may reasonably request from time to time in order to perfect or confirm the Customer's ownership of the rights assigned by this Agreement.

8. Developer Credit

8.1 The Developer may include the Developer Credit on [each page of the Website] in a position [to be agreed by the parties acting reasonably].

8.2 The Customer must retain the Developer Credit on the Website[ and any adapted version of the Website], must not interfere with the Developer Credit[ in any way which will have or may reasonably be expected to have a negative impact upon the value of the Developer Credit to the Developer], and may only remove the Developer Credit at the Developer's request.

9. Charges

9.1 The Customer shall pay the Charges to the Developer in accordance with this Agreement.

9.2 If the Charges are based in whole or part upon the time spent by the Developer performing the Services, the Developer must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Developer any Charges in respect of Services performed in breach of this Clause 9.2.

9.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Developer].

9.4 The Developer may elect to vary [any element of the Charges] by giving to the Customer not less than [30 days'] written notice of the variation[ expiring [on any anniversary of the date of execution of this Agreement]][, providing that no such variation shall result in an aggregate percentage increase in the relevant element of the Charges during the Term that exceeds[[ 2]% per annum over] the percentage increase, during the same period, in [the Retail Prices Index (all items) published by the UK Office for National Statistics]].

10. Payments

10.1 The Developer shall issue invoices for the Charges to the Customer [from time to time during the Term] OR [on or after the invoicing dates set out in Paragraph 6 of Schedule 1 (Web design and development particulars)] OR [*[dates for invoicing]*].

10.2 The Customer must pay the Charges to the Developer within the period of [30 days] following [the issue of an invoice in accordance with this Clause 10] OR [the receipt of an invoice issued in accordance with this Clause 10].

10.3 The Customer must pay the Charges by [debit card, credit card, direct debit, bank transfer or cheque] (using such payment details as are notified by the Developer to the Customer from time to time).

10.4 If the Customer does not pay any amount properly due to the Developer under this Agreement, the Developer may:

(a) charge the Customer interest on the overdue amount at the rate of [8% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or

(b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

OR

10.4 If the Customer does not pay any amount properly due to the Developer under this Agreement, the Developer may charge the Customer interest on the overdue amount at the rate of [2% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).[ The Developer acknowledges and agrees that it shall have no right to claim interest or statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998, and that its contractual rights under this Clause 10.4 constitute a substantial remedy within the meaning of that Act.]

11. Warranties

11.1 The Developer shall provide the Services [with reasonable skill and care] OR [in accordance with the standards of skill and care reasonably expected from a leading service provider in the Developer's industry] OR [*[specify standard(s)]*].

11.2 The Developer warrants to the Customer that:

(a) [the Developer has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement];

(b) [the Developer will comply with all applicable legal and regulatory requirements applying to the exercise of the Developer's rights and the fulfilment of the Developer's obligations under this Agreement]; and

(c) [the Developer has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement].

*[additional list items]*

11.3 The Developer warrants to the Customer that:

(a) [the Website as provided will conform in all [material] respects with the Website Specification];

(b) [the Website will be supplied free from Website Defects[ and will remain free from Website Defects[ for a period of at least 12 months following the supply of the Website]]];

(c) [the Website will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs]; and

(d) [the Website shall incorporate security features reflecting the requirements of good industry practice].

*[additional list items]*

11.4 The Developer warrants to the Customer that the Website[ and Documentation][, when used by the Customer in accordance with this Agreement,] will not breach [any laws, statutes or regulations applicable under English law]; providing however that the Developer shall have no liabilities under this Clause 11.4 in respect of any such breach caused by the Customer Materials[ or the Third Party Materials].

11.5 The Developer warrants to the Customer that the Website[ and Documentation], when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person [in any jurisdiction and under any applicable law]; providing however that the Developer shall have no liabilities under this Clause 11.5 in respect of any such infringement caused by the Customer Materials[ or the Third Party Materials].

11.6 If [the Developer reasonably determines, or any third party alleges, that the use of the Website by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights], the Developer may[ acting reasonably] at its own cost and expense:

(a) modify the Website in such a way that it no longer infringes the relevant Intellectual Property Rights[, providing that [any such modification must not introduce any Website Defects into the Website and must not result in the Website failing to conform with the Website Specification]]; or

(b) procure for the Customer the right to use the Website in accordance with this Agreement.

11.7 The Customer warrants to the Developer that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

11.8 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

12. Limitations and exclusions of liability

12.1 Nothing in this Agreement will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law.

12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in this Agreement:

(a) are subject to Clause 12.1; and

(b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

12.3 [Neither party shall be liable to the other party] OR [The Developer shall not be liable to the Customer] OR [The Customer shall not be liable to the Developer] in respect of any losses arising out of a Force Majeure Event.

12.4 [Neither party shall be liable to the other party] OR [The Developer shall not be liable to the Customer] OR [The Customer shall not be liable to the Developer] in respect of any loss of profits or anticipated savings.

12.5 [Neither party shall be liable to the other party] OR [The Developer shall not be liable to the Customer] OR [The Customer shall not be liable to the Developer] in respect of any loss of revenue or income.

12.6 [Neither party shall be liable to the other party] OR [The Developer shall not be liable to the Customer] OR [The Customer shall not be liable to the Developer] in respect of any loss of use or production.

12.7 [Neither party shall be liable to the other party] OR [The Developer shall not be liable to the Customer] OR [The Customer shall not be liable to the Developer] in respect of any loss of business, contracts or opportunities.

12.8 [Neither party shall be liable to the other party] OR [The Developer shall not be liable to the Customer] OR [The Customer shall not be liable to the Developer] in respect of any loss or corruption of any data or database.

12.9 [Neither party shall be liable to the other party] OR [The Developer shall not be liable to the Customer] OR [The Customer shall not be liable to the Developer] in respect of any special, indirect or consequential loss or damage.

12.10 The liability of [each party to the other party] OR [the Developer to the Customer] OR [the Customer to the Developer] under this Agreement in respect of any event or series of related events shall not exceed the greater of:

(a) *[amount]*; and

(b) [the total amount paid and payable by the Customer to the Developer under this Agreement in the 12 month period preceding the commencement of the event or events].

12.11 The aggregate liability of [each party to the other party] OR [the Developer to the Customer] OR [the Customer to the Developer] under this Agreement shall not exceed the greater of:

(a) *[amount]*; and

(b) [the total amount paid and payable by the Customer to the Developer under this Agreement].

13. Termination

13.1 The Developer may terminate this Agreement by giving to the Customer [not less than 30 days'] written notice of termination.

13.2 The Customer may terminate this Agreement by giving to the Developer [not less than 30 days'] written notice of termination.

13.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party commits any [breach] OR [material breach] of this Agreement[, and the breach is not remediable];

(b) [the other party commits a [breach] OR [material breach] of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of [30 days] following the giving of a written notice to the other party requiring the breach to be remedied]; or

(c) [the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach)].

13.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[ (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement)]; or

(d) [if that other party is an individual:

(i) that other party dies;

(ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

(iii) that other party is the subject of a bankruptcy petition or order.]

13.5 The Developer may terminate this Agreement immediately by giving written notice to the Customer if:

(a) any amount due to be paid by the Customer to the Developer under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

(b) the Developer has given to the Customer at least [30 days'] written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 13.5.

14. Effects of termination

14.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 4.7, 7.1, 7.4, 8, 10.2, 10.4, 12, 14, 16 and 17].

14.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

14.3 Within [30 days] following the termination of this Agreement for any reason:

(a) the Customer must pay to the Developer any Charges in respect of Services provided to the Customer before the termination of this Agreement; and

(b) the Developer must refund to the Customer any Charges paid by the Customer to the Developer in respect of Services that were to be provided to the Customer after the termination of this Agreement,

 without prejudice to the parties' other legal rights.

15. Subcontracting

15.1 The Developer must not subcontract any of its obligations under this Agreement without the prior written consent of the Customer[, providing that the Customer must not unreasonably withhold or delay the giving of such consent].

OR

15.1 Subject to any express restrictions elsewhere in this Agreement, the Developer may subcontract any of its obligations under this Agreement[, providing that the Developer must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question].

15.2 The Developer shall remain responsible to the Customer for the performance of any subcontracted obligations.

16. General

16.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

16.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

16.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

16.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

16.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

16.6 Subject to Clause 12.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

16.7 This Agreement shall be governed by and construed in accordance with [English law].

16.8 The courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

17. Interpretation

17.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

17.2 The Clause headings do not affect the interpretation of this Agreement.

17.3 References in this Agreement to "calendar months" are to [the 12 named periods (January, February and so on) into which a year is divided].

17.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY [*[individual name]* on [...............], the Developer] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Developer]:

........................................

SIGNED BY [*[individual name]* on [...............], the Customer] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Customer]:

........................................

SCHEDULE 1 (WEB DESIGN AND DEVELOPMENT PARTICULARS)

1. Specification of Website

*[Specify Website]*

2. Rights in Website to be assigned

*[Identify rights to be assigned]*

3. Customer Materials

*[Identify Customer Materials]*

4. Third Party Materials

*[Identify Third Party Materials]*

5. Timetable

*[Insert timetable]*

6. Financial provisions

*[Insert financial provisions]*

Free web design and development agreement: drafting notes

This free web design and development agreement covers all the key issues arising in a typical contract, whilst being relatively easy to edit.

A set of clauses in the document deal with the practicalities of the development process. These cover the developer's fundamental delivery obligations, the timetable for development, delays in the development process, consultation during the process, the customer's obligations in respect of co-operation and delivery of customer works, and similar matters.

The intellectual property clause allows for the rights in the website to be assigned to the customer, licensed to the customer, or subject to a mixed assignment and licence. For example, the graphical components of the website may be assigned to the customer, while the developer retains the copyright in the software that runs the website. Third party works (such as open source frameworks and stock images) are subject to a separate licensing clause.

This document is identical to our basic web design and development agreement, except that it includes a mandatory credit for SEQ Legal, which under our licensing terms you must retain in the document. If you do not want a credit for SEQ Legal in your document, you should consider purchasing the basic, standard or premium version of this document.

DATE

* Insert the date of execution of the document.

PARTIES

Subsection 1

* Is the first party an individual, a company or a partnership?
* What is the full name of the individual (including middle names)?
* What is the postal address of the first party?
* What is the full company name of the first party?
* In which jurisdiction is the first party incorporated?
* What is the registration number of the first party?
* What is the registered office address of the first party?
* What is the name of the first party partnership?
* In which jurisdiction is the first party partnership established?
* Where is the principal place of business of the first party?

Subsection 2

* Is the second party an individual, a company or a partnership?
* What is the full name of the individual (including middle names)?
* What is the postal address of the second party?
* What is the full company name of the second party?
* In which jurisdiction is the second party incorporated?
* What is the registration number of the second party?
* What is the registered office address of the second party?
* What is the name of the second party partnership?
* In which jurisdiction is the second party partnership established?
* Where is the principal place of business of the second party?

AGREEMENT

Clause 1: Definitions

Clause 1.1

Definition of Charges

* What charges are payable under this document?
* How should the time-based charging rates be described or specified?
* Will all the services be subject to time-based charging, or only some of the services?
* How are time-based charging units to be rounded?

Definition of Customer Materials

* Define "Customer Materials".

Definition of Development Services

* Define "Development Services".

Definition of Documentation

* How should the website documentation be identified?

Definition of Effective Date

* When will the contract come into force?

Definition of Force Majeure Event

* Specify particular examples of force majeure events.

Definition of Services

* Define "Services".

Definition of Source Code

* Consider whether to adapt the definition of source code.

Definition of Term

* Define "Term", the period during which the contract will subsist.

Definition of Third Party Materials

* Must all third party materials incorporated into the website be specifically identified in the specification of the website or included subject to the parties' agreement?

Definition of Website Defect

* Will non-material defects count as website defects for the purposes of this definition?
* In what ways may a relevant defect affect the website?
* Should a set of general exclusions from this definition be included?
* What exclusions should apply here?

Definition of Website Specification

* Define "Website Specification". NB in many cases it will not be appropriate to include a reference to documentation in this definition.
* May the specification for the website be varied by the written agreement of the parties?

Clause 2: Credit

Clause: Free documents licensing warning

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

Clause 3: Term

Clause 3.2

* Is the term of the contract indefinite, or will it come to an end upon some agreed date, or upon the occurrence of a defined event?
* Upon what date will the contract terminate?
* Upon the occurrence of what event will the contract terminate?

Clause 4: Development Services

Clause 4.2

* Will the Developer have an absolute or qualified obligation to meet the timetable for the provision of the development services?
* What exactly will be delivered to the Customer?

Clause 4.3

Optional element.

Clause 4.4

Optional element.

* Specify the subject of the coding standard obligations.
* What obligations will the Developer have in relation to the software code itself?

Clause 4.5

Optional element.

Clause 4.6

Optional element.

* When will the Developer's obligations under this provision apply?
* Will the Developer supply development copies of the website to the Customer, or merely make the development versions available (eg via the internet)?
* What will be made available to the Customer under this provision?
* For what purposes may the Customer use the development copy or version?

Clause 5: Customer obligations

Optional element.

Clause 5.1

* What must the Customer provide to the Developer?

Clause 5.2

Optional element.

Clause 6: Customer Materials

Will the Customer provide any data, works or materials to the Developer for use by the Developer?

Clause 6.2

* What may the Developer do with the Customer's materials?
* Will the Developer have the right to sub-license its rights under this provision?

Clause 6.3

Optional element.

* Do the warranties relating to legality apply to the Customer's materials generally, or just to uses permitted by this document?
* Will this warranty extend to legal rights other than intellectual property rights?
* Should a warranty of legality be included?
* What (if any) jurisdictional limitations and applicable law limitations should apply to these warranties?

Clause 7: Intellectual Property Rights

Three options regarding intellectual property rights in the website and documentation are available: the first is a simple assignment (transfer) of the intellectual property rights; the second is a licence of the intellectual property rights; and the third is a mixed licence and assignment.

Clause 7.1

* Does the assignment cover all intellectual property rights in the relevant subject matter, or only those that are in fact owned by the Developer?
* Does the assignment cover both existing and future rights?
* Are any rights specifically excluded from the assignment?
* Which rights are specifically excluded from the assignment?

Clause 7.1

* What type of licence will the Developer grant to the Customer?
* What exactly may the Customer do with the deliverables?
* Do any rights in the deliverables need to be carved out from the licence (eg rights in third party materials)?
* Will the licence be limited by reference to the purposes for which the deliverables may be used?
* The rights in which elements of the deliverables should be carved out from the licence?
* For what purposes may the deliverables be used?

Clause 7.1

* Does the assignment cover all intellectual property rights in the relevant subject matter, or only those that are in fact owned by the Developer?
* Does the assignment cover both existing and future rights?
* What type of licence will the Developer grant to the Customer?
* What exactly may the Customer do with the deliverables?
* Will the licence be limited by reference to the purposes for which the deliverables may be used?
* For what purposes may the deliverables be used?

Clause 7.2

* Will the website incorporate any third party materials?
* How will third party materials be licensed?

Clause 7.3

Optional element.

Clause 7.4

Optional element.

* Is the Developer's obligation here absolute or qualified?
* What standard of effort should be applied to the obligation?

Clause 8: Developer Credit

Optional element.

Clause 9: Charges

Clause 9.2

Optional element.

Clause 9.3

Optional element.

* Are payment amounts stated inclusive or exclusive of VAT?

Clause 9.4

Optional element. Will the Developer be permitted to vary the charges, or any element of the charges, in any circumstances?

* Which elements of the charges may be varied?
* What notice period should apply to the variation of charges?
* Must notice of the variation expire upon some specific date?
* Should variations of charges be limited by reference to an index?
* Specify the relevant date.
* Will the charges variation cap exceed RPI by a defined percentage?
* Identify the index in question.
* Specify the relevant percentage.

Clause 10: Payments

Clause 10.1

* When should invoices be issued?
* Specify invoicing dates.

Clause 10.2

* What is the period for payment of invoices?
* When does the period for payment of an invoice begin to run?

Clause 10.3

Optional element.

* Using what methods should payments be made?

Clause 10.4

* What contractual interest rate should apply to late payments?

Clause 10.4

* What interest rate will apply here?
* Consider whether to include this acknowledgement.

Clause 11: Warranties

Optional element.

Clause 11.1

Optional element. Must the services meet any specified standard(s)?

* What standard(s) must the services meet?

Clause 11.2

Optional element.

* What general warranties will the Developer give to the Customer?

Clause 11.3

Optional element.

* What warranties in relation to the quality of the website will the Developer give to the Customer?
* Is this warranty subject to a materiality threshold?
* Will this warranty relate to a specific period?
* For what period will this warranty apply?

Clause 11.4

Optional element.

* Should this warranty cover documentation?
* What is the scope of this warranty?

Clause 11.5

Optional element.

* Should this warranty cover documentation?
* What is the jurisdictional coverage of the warranty?

Clause 11.6

Optional element.

* In what circumstances may the Developer exercise its rights under this provision?
* Should there be an express requirement for the Developer to act reasonably in relation to the exercise of its rights under this provision?
* Are there any express limitations on this right to modify?
* Specify the limitations on the right to modify.

Clause 11.7

Optional element.

Clause 12: Limitations and exclusions of liability

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable.

The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in its standard terms and conditions, but will also sometimes intervene where a term has been individually negotiated.

The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable.

If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should be drafted as an independent term, and be numbered separately from the other provisions.

It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into.

Exclusions and limitations of liability in UK contracts are primarily regulated by the Unfair Contract Terms Act 1977 ("UCTA").

Contracts regulated by UCTA cannot exclude or restrict a party's liability for death or personal injury resulting from negligence (Section 2(1), UCTA).

Except insofar as the relevant term satisfies the requirements of reasonableness, such contracts cannot exclude or restrict liability: (i) for negligence (which includes a breach of an express or implied contractual obligation to take reasonable care or exercise reasonable skill) (Section 2(2), UCTA); or (ii) for misrepresentation (Section 3, Misrepresentation Act 1967).

In addition, if a contract is regulated by UCTA, and one of the parties is dealing on the other's written standard terms of business, then except insofar as the relevant contractual term satisfies the requirements of reasonableness the other party cannot: (i) exclude or restrict its liability in respect of a breach of contract; or (ii) claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of it; or (iii) claim to be entitled, in respect of the whole or any part of its contractual obligation, to render no contractual performance at all (see Section 3, UCTA).

UCTA includes various other restrictions, particularly in the case of contracts for the sale of goods and contracts under which possession or ownership of goods passes.

If you wish to try to limit/exclude for liability in respect of reckless, deliberate, personal and/or repudiatory breaches of contract, you should specify this in relation to the relevant provision (for example, using the following wording: "The limitations and exclusions of liability in this Clause [number] will apply whether or not the liability in question arises out of any reckless, deliberate, personal and/or repudiatory conduct or breach of contract"). In many circumstances, however, the courts will find these types of limitations and exclusions to be unenforceable.

Somewhat different rules apply to limitations of liability in contracts with consumers, and these provisions should not be used in relation to such contracts.

These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

Clause 12.1

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

Clause 12.3

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.4

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.5

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.6

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.7

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.8

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.9

Optional element.

"Consequential loss" has a special meaning in English law: it means any loss that, whilst not arising naturally from the breach, was specifically in the contemplation of the parties when the contract was made.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 12.10

Optional element. Do you want to include a per event liability cap in this document?

Liability caps may be unenforceable in practice.

* Which of the parties will be the beneficiary of this liability cap?
* Do you want to include a per event liability cap in this document?
* What monetary amount should be used in the liability cap?
* What floating amount should be used in the liability cap?

Clause 12.11

Optional element. Do you want to include an aggregate liability cap in this document?

Liability caps may be unenforceable in practice.

* Which of the parties will be the beneficiary of this liability cap?
* What monetary amount should be used in the liability cap?
* What floating amount should be used in the liability cap?

Clause 13: Termination

Clause 13.1

Optional element.

* What notice period will apply?

Clause 13.2

Optional element.

* What notice period will apply?

Clause 13.3

* In what circumstances may a party terminate for breach?
* Will all breaches, or only material breaches, give rise to a right of termination?
* What is the remediation period here?
* Should each party have a right to terminate if the other party is persistently in breach of contract, even where there has been no material breach?

Clause 13.4

* Will the winding up of a party as part of a solvent company reorganisation give rise to a right of termination for the other party?
* Will or might a party to the document be an individual, rather than a corporate entity?

Clause 13.5

Optional element.

* What notice period applies in the case of termination for non-payment?

Clause 14: Effects of termination

Clause 14.3

Optional element.

This provision will not be suitable in all circumstances. The appropriate treatment of charges upon termination will vary from contract to contract. Note, also, that this provision only deals with charges in respect of services.

* Within what period following termination must charges in respect of services be settled?

Clause 15: Subcontracting

Optional element.

Clause 15.1

* Will the Customer only be permitted to withhold consent to subcontracting where it is reasonable to do so?

Clause 15.1

* Will the Developer be obliged to notify the Customer of any subcontracting arrangements?

Clause 16: General

Clause 16.1

Optional element.

Clause 16.2

Optional element.

Clause 16.3

Optional element.

This is intended to prevent, for example, one party wrongfully claiming that a term of the contract was changed in a telephone call.

Clause 16.4

Optional element.

Clause 16.5

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

Clause 16.6

Optional element.

Clause 16.7

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

* Which law will govern the document?

Clause 16.8

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

* The courts of which jurisdiction will have the exclusive right to adjudicate disputes relating to the document (subject to applicable law)?

Clause 17: Interpretation

Should provisions concerning the interpretation of the document be included?

Clause 17.1

Optional element.

Clause 17.2

Optional element.

Clause 17.3

Optional element.

Clause 17.4

Optional element.

This provision is designed to exclude the application of a rule of interpretation known as the ejusdem generis rule. That rule may affect the interpretation of contractual clauses that list particular examples or instances of some more general idea, by limiting the scope of the general idea by reference to those particular examples or instances.

EXECUTION

Subsection: Execution of contract by first party (individual, company or partnership)

* Will the contract be signed by the (first party) contracting individual, or a person on behalf of the (first party) contracting entity?
* What is the full name of the first party signatory?
* On what date is the first party signing the contract?
* Add the full name of the person who will sign the document on behalf of the first party.
* On what date is the contract being signed on behalf of the first party?

Subsection: Execution of contract by second party (individual, company or partnership)

* Will the contract be signed by the (second party) contracting individual, or by a person on behalf of the (second party) contracting entity?
* What is the full name of the second party signatory?
* On what date is the second party signing the contract?
* Add the full name of the person who will sign the document on behalf of the second party.
* On what date is the contract being signed on behalf of the second party?

SCHEDULE 1 (WEB DESIGN AND DEVELOPMENT PARTICULARS)

Paragraph 1: Specification of Website

* Specify the website.

Paragraph 2: Rights in Website to be assigned

Optional element.

* Identify the rights in the website that will be assigned (in other words, that will have their ownership transferred from one party to the other) as opposed to being licensed.

Paragraph 3: Customer Materials

Optional element.

* Identify the customer materials to be supplied by the Customer to the Developer.

Paragraph 4: Third Party Materials

Optional element.

* Identify those third party materials that will be incorporated.

Paragraph 5: Timetable

Optional element.

* Insert the timetable for the performance of the parties' obligations.

Paragraph 6: Financial provisions

* Insert financial provisions.