

Website Development Agreement

THIS AGREEMENT is made and entered into as of this [date] (the “Effective Date”) by and between [COMPANY] (“COMPANY”) and Hexagon IT Solutions, a Utah company with an office at 827 E Pioneer Rd Unit #103, Draper, Utah 84020 (“DEVELOPER”).

WITNESSETH

WHEREAS, COMPANY desires to engage DEVELOPER to develop, create, test, and deliver a Web Sites for the properties as a work made for hire and to house the Web Site on DEVELOPER’s Web Server and make the Web Site available for browsing on the Internet; and

WHEREAS, DEVELOPER is interested in undertaking such work; and

WHEREAS, COMPANY and DEVELOPER mutually desire to set forth the terms applicable to such work;

NOW, THEREFORE, for the mutual consideration set forth herein, the adequacy of which is hereby acknowledged, COMPANY and DEVELOPER, intending to be legally bound, hereby agree as follows:

1. Developer Responsibilities

A. Scope of Work

COMPANY hereby retains the services of DEVELOPER to design, develop, and host a Web Site for COMPANY in accordance with the proposal submitted as Scope of Work, which is attached hereto as Exhibit A and the terms of which are expressly incorporated herein by reference.

B. Schedule

The “Schedule” for the development of COMPANY Web Site will start once the agreement is signed.

C. Changes

Changes to this Agreement or to any of the specifications of the Web Site in any of the specifications thereof shall become effective only when a written change request is executed by the COMPANY and DEVELOPER. DEVELOPER agrees to notify COMPANY promptly of any factor, occurrence, or event coming to its attention that may affect DEVELOPER’s ability to meet the requirements of this Agreement, or that is likely to occasion any material delay in the Schedule.

2. Web Site Design

A. Design

The design of COMPANY's Web Site shall be in substantial conformity with the material provided to DEVELOPER by COMPANY. DEVELOPER shall develop COMPANY's Web Site to project the highest professional image. DEVELOPER shall not include any of the following in the Web Site or in COMPANY's directory on DEVELOPER's Web Server: text, graphics, sound, or animations that might be viewed as offensive or related in any way to sex or any illegal activities; links to other sites that might be viewed as offensive or related in any way to sex or any illegal activities; impressionistic or cartoon-like graphics (unless provided by COMPANY); invisible text, text that is present only when a "webcrawler" or other web indexing tool accesses the Web Site, or any other type of hidden text, hidden information, hidden graphics, or other hidden materials; or destructive elements or destructive programming of any type.

B. Materials Provided by COMPANY

All materials to be supplied by COMPANY may be provided by the company will be deemed as COMPANY's material.

C. Specifications for Home Page

COMPANY's Web Site will consist of a Home Page (the "first" page for the Web Site) that can be reached by typing one of the following Uniform Resource Locators ("URLs") into a Web Browser. DEVELOPER will use its best efforts to register the COMPANY's domain name for the benefit of COMPANY (or such other name as may be registrable and acceptable to COMPANY) and will assign all rights thereto to COMPANY. COMPANY agrees to pay all registration fees associated with such registration.

D. Accessibility of Web Site During Construction

Throughout the construction of the prototype and the final Web Site, the Web Site shall be accessible to COMPANY. Until COMPANY has approved the final Web Site, none of the Web Pages for COMPANY's Web Site will be accessible to end users.

E. Project Planning Meetings

After both parties have signed this Agreement, the parties shall meet virtually with the DEVELOPER's "Project Manager" at a convenient date and time to discuss project planning.

F. Submission To Index Sites

At the time that DEVELOPER conducts the first "walk through" of COMPANY's final Web Site, DEVELOPER will register COMPANY's URL with the following search engines: Google and Bing.

G. Delivery of Deliverables

Upon COMPANY's approval of its final Web Site, or upon termination of this Agreement, whichever occurs earlier, DEVELOPER shall deliver to COMPANY all Code, Documentation, reports and other materials developed by DEVELOPER in the course of its performance under this Agreement and any other items reasonably necessary for the operation of COMPANY's Web Site (other than third party operating system software, third party networking software, Web Browsers, and hardware) and all changes and enhancements thereto (the "Deliverables").

H. Web Site Hosting / Server Hosting

DEVELOPER agrees, at COMPANY's option, to maintain COMPANY's Web Site on DEVELOPER's Web Server on a month-to-month basis, and to make occasional maintenance modifications to COMPANY's Web Site in accordance with COMPANY's directions. Such modifications shall be implemented within five (5) business days of DEVELOPER's receipt of COMPANY's changes if the changes are easily implemented, and within the agreed timeline. The initial development of the website or on-boarding a new property will be 14 days.

I. Back-Up Copies

Developer will Back Up COMPANY's Web Site once per week and maintain it in the hosting server and off-site location.

J. Transaction Logging

During the time that COMPANY's Web Site is located on DEVELOPER's Web Server, DEVELOPER will make available on a monthly basis and free of charge an analysis of COMPANY Web Site traffic, including source IP address, most commonly viewed pages and any other such data reasonably requested by COMPANY. DEVELOPER shall set aside a portion of its server, such portion only accessible by designated COMPANY staff or members, in which analysis resides. The analysis may be viewed or printed out by COMPANY at its option.

K. Compensation

Estimated cost for on-boarding COMPANY's Web Site is listed in Scope of Work (Exhibit A). Estimated cost for hosting the site is listed in Scope of Work (Exhibit A).

L. Invoicing

Following Initial Delivery and Publication of Web Site, thereafter, DEVELOPER shall invoice COMPANY on the second (2nd) day of each month and repeat invoicing on a monthly basis. All payments are considered PAST DUE fifteen (15) days after receipt of a properly payable invoice.

M. Expenses

The prices set forth above are exclusive of expenses. Except as expressly agreed otherwise in writing by COMPANY, DEVELOPER shall invoice any charges that is like stock images or video. COMPANY shall have no obligation to provide office space, work facilities, equipment, clerical services, programming services, or the like.

3. **PRIVACY**

A. COMPANY Confidentiality

DEVELOPER shall treat this project as confidential. After COMPANY has approved its final Web Site, however, DEVELOPER may list COMPANY as a client of DEVELOPER and may include a link to COMPANY's Web Site on DEVELOPER's Web Site. DEVELOPER may not issue any press release that refers to DEVELOPER's work for COMPANY unless COMPANY has previously approved the press release in writing, which approval may be withheld for any reason or for no reason at all.

B. DEVELOPER Confidentiality

It is understood and agreed that COMPANY does not wish to receive from DEVELOPER any confidential information of DEVELOPER or of any third party. DEVELOPER represents and warrants that any information provided to COMPANY while entering into this Agreement or performing any work hereunder shall not be confidential or proprietary to DEVELOPER.

C. Confidential Information of COMPANY

From time-to-time COMPANY may provide its own confidential business and technical information to DEVELOPER in connection with the work to be performed by DEVELOPER hereunder. Such information shall be designated as confidential upon or prior to disclosure by COMPANY. In addition, the preparation and specifications of the Deliverables shall in all instances be treated as confidential, unless and until disclosed publicly by COMPANY. DEVELOPER shall use its best efforts to prohibit any use or disclosure of COMPANY's confidential information, except as necessary to perform work hereunder.

4. **Ownership and Rights**

A. Ownership of Work Product by Company

Except as set forth below, all elements of all Deliverables shall be exclusively owned by COMPANY and shall be considered works made for hire by DEVELOPER for

COMPANY, with exception to EDIFICE CMS (Web Site CMS).

B. Preexisting Works

In the event that any portion of any Deliverable (including the entirety thereof) constitutes a PREEXISTING WORK, the DEVELOPER cannot grant ownership to COMPANY.

C. Indemnification / No Infringement

In performing services under this Agreement, DEVELOPER agrees not to design, develop, or provide to COMPANY any items that infringe one or more patents, copyrights, trademarks, or other intellectual property rights (including trade secrets), privacy or other rights of any person or entity. If DEVELOPER becomes aware of any such possible infringement while performing any work hereunder, DEVELOPER shall immediately so notify COMPANY in writing. DEVELOPER agrees to indemnify, defend, and hold COMPANY, its officers, directors, members, employees, representatives, agents, and the like harmless for any such alleged or actual infringement and for any liability, debt, or other obligation arising out of or as a result of or relating to (a) the Agreement, (b) the performance of the Agreement, or (c) the Deliverables. This indemnification shall include attorneys' fees and expenses, unless DEVELOPER defends against the allegations using counsel reasonably acceptable to COMPANY. DEVELOPER's total liability under this Agreement shall not exceed twice the amount of revenue derived by DEVELOPER under this Agreement.

5. Representations and Warranties

A. DEVELOPER makes the following representations and warranties for the benefit of COMPANY:

- a. **No Conflict:** DEVELOPER represents and warrants that it is under no obligation or restriction that would in any way interfere or conflict with the work to be performed by DEVELOPER under this Agreement. COMPANY understands that DEVELOPER is currently working on one or more similar projects for other clients. Provided that those projects do not interfere or conflict with DEVELOPER's obligations under this Agreement, those projects shall not constitute a violation of this provision of the Agreement.
- b. **Ownership Rights:** DEVELOPER represents and warrants that (1) it is and will be the sole author of all works employed by DEVELOPER in preparing any and all Deliverables other than Preexisting Works; (2) it has and will have full and sufficient right to assign or grant the rights and/or licenses granted in the Deliverables pursuant to this Agreement; (3) all Deliverables other than Preexisting Works have not been and will not be published under circumstances that would cause a loss of copyright therein; and (4) all Deliverables, including all Preexisting Works, do not and will not infringe any patents, copyrights, trademarks, or other intellectual property rights (including trade secrets), privacy or similar rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against DEVELOPER (or, insofar as DEVELOPER is aware, against any entity from which DEVELOPER has obtained such rights).
- c. **Conformity, Performance, and Compliance:** DEVELOPER represents and warrants that (1) all Deliverables shall be prepared in a workmanlike manner and

with professional diligence and skill; (2) all Deliverables will function under standard HTML conventions; and PHP (3) all Deliverables will conform to the specifications and functions set forth in this Agreement; and (4) DEVELOPER will perform all work called for by this Agreement in compliance with applicable laws. DEVELOPER will repair any Deliverable that does not meet this warranty within a reasonable period if the defect affects the usability of COMPANY's Web Site, and otherwise will repair the defect within 24 hours, said repairs to be free of charge to COMPANY. This warranty shall extend for the life of this Agreement. This warranty does not cover links that change over time, pages that become obsolete over time, content that becomes outdated over time, or other changes that do not result from any error on the part of DEVELOPER.

6. Terms and Termination

- A. **Term of Agreement:** This Agreement shall be effective as of the Effective Date and shall remain in force for a period of 99 years, unless otherwise terminated as provided herein.
- B. **Termination of Work:** COMPANY may, at its sole option, terminate any or all work outstanding, or any portion thereof, immediately upon written notice. Upon receipt of notice of such termination, DEVELOPER shall inform COMPANY of the extent to which performance has been completed through such date and collect and deliver to COMPANY whatever work product and Deliverables then exist in a manner prescribed by COMPANY. DEVELOPER shall be paid for all work performed through the date of receipt of notice of termination as specified herein. DEVELOPER may not terminate any work under this Agreement without the prior written consent of COMPANY.
- C. **Survival:** In the event of any termination of this Agreement, all obligations and responsibilities of DEVELOPER shall survive and continue in effect and shall inure to the benefit of and be binding upon the parties and their legal representatives, heirs, successors, and assigns. The termination of any provision of this Agreement shall not excuse a prior breach of that provision.
- D. **Termination for Cause:** This Agreement may be terminated by either party upon thirty (30) days written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, provided that, during the thirty (30) days period, the breaching party fails to cure such breach.
- E. **Force Majeure:** Neither party shall be liable for any loss or delay resulting from any force majeure event, including acts of God, fire, natural disaster, labor stoppage, war or military hostilities, or inability of carriers to make scheduled deliveries, and any payment or delivery date shall be extended to the extent of any delay resulting from any force majeure event.

7. No Agency

- A. **Independent Contractor:** DEVELOPER, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. DEVELOPER shall be solely responsible for and shall hold COMPANY harmless for any and all claims for taxes, fees, or costs, including but not limited to withholding, income tax, FICA, and Workman's Compensation.

B. **No Agency:** COMPANY does not undertake by this Agreement or otherwise to perform any obligation of DEVELOPER, whether by regulation or contract. In no way is DEVELOPER to be construed as the agent or to be acting as the agent of COMPANY in any respect, any other provisions of this Agreement notwithstanding.

8. Notices

A. If one party is required or permitted to give notice to the other under this Agreement, such notice shall be deemed given either (a) when transmitted by facsimile or (b) two business days after depositing the notice in the U.S. mail, first-class postage prepaid, at the address or facsimile number specified above, or at such other address or facsimile number as the party may specify in writing in accordance with this paragraph.

9. Time of the Essence

A. Time is of the essence to the performance of the parties' obligations under this Agreement.

10. Multiple Counterparts

A. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

11. Jurisdiction and Disputes

A. This Agreement shall be governed by the laws of Utah.

B. All disputes hereunder shall be resolved in the applicable state or federal courts of Utah. The party's consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

12. Agreement Binding on Successors

A. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

13. Waiver

A. No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

14. Severability

A. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

15. Assignability

A. The Agreement is personal to DEVELOPER and may not be assigned by any act of DEVELOPER or by operation of law unless in connection with a transfer of substantially all the assets of DEVELOPER or with the consent of COMPANY, which consent shall not be

unreasonably withheld.

16. Integration

- A. This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict therewith.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

Exhibit A - Attach DEVELOPER Proposal

Exhibit B - Schedule for Development of Company Website

<u>Task</u>	<u>Date</u>
Initial Files Transmitted to	As soon as possible
DEVELOPER URL Registration	3 days after Execution
Complete PSF:URL Assigned	As soon as possible after URL Registration
Initial Meeting with COMPANY staff to discuss Initial Design of Web site	3 days from receipt of Design Fee and Execution of Agreement
Creation of Initial Design and posting on private area on DEVELOPER server	5 days from Initial Meeting with COMPANY staff
Passwords and User IDs	5 days after receipt of Membership
PSF: Review and Approval of Initial Design by COMPANY	5 days from posting of Initial Design
Posting of Beta Test Site for Web	2 days from approval by COMPANY
Site Posting of Final Web Site	5 days from approval by COMPANY of Beta Test Site

* All references to “days” shall mean “Business Days”

** Any changes requested by COMPANY shall be implemented within 5 days or less by DEVELOPER