



WEBSITE DEVELOPMENT AGREEMENT & GUIDE

Included:

Overview

Dos and Don'ts Checklist

Website Development Agreement Instructions

Sample Website Development Agreement

1. Overview

In the modern marketplace, developing and maintaining an active web presence is essential. Customers look for services and products online as a matter of course, and organizations with rudimentary or confusing websites may lose thousands of dollars in sales to businesses with more polished and professional avenues for electronic commerce. Experts are needed to create the right “look” and companies that intend to hire designers and developers for their websites will need to use a well-drafted website development agreement.

The company and the developer each need a contract that will protect them from liabilities associated with the creation of a website. That document should be used to spell out each party’s development, performance, ownership, and service expectations. Many things can go wrong in the process, and a detailed agreement can limit frustrations and make processes clear from the beginning.

The enclosed document should provide a good starting point for drafting a contract to cover the development of a company’s website. Both parties must continue to discuss the terms of their agreement, settling questions about work parameters, payment, and responsibilities. Once you have agreed on contract terms and have signed the attached form, each party can focus on its area of development: the company on its business and the contractor on the website itself.

2. Dos & Don’ts Checklist

- The enclosed agreement is designed to protect the parties’ rights during the contract term. It does not, however, describe what tasks will be performed or the rates applicable to any such work. These issues should be resolved by the parties, drafted, and attached to the enclosed document as Exhibit A.
- One danger in a website development arrangement is what may be called project expansion or “scope creep.” The initial work parameters may slowly creep outwards, and the parties may be left with a large-scale endeavor with deadlines and costs extending beyond the initially agreed-on range. Although even a well-drafted contract cannot prevent this (somewhat) inevitable expansion, it will allow the parties to detail the consequences of this creep. For example, putting immutable deadlines in an agreement may not be appropriate; conditioning payments on the achievement of certain goals may be more workable.
- Many website developers have their own form contracts that they will want to use to govern an agreement about website construction. Unsurprisingly, these contracts tend to be largely developer-friendly. Most significantly, the forms often provide that the developer will own the intellectual property and copyrightable elements of the website. This means the developer can provide a site to one of your direct competitors that is quite similar to yours. The developer can also insist that you stop using the website down the road – you will be using it only pursuant to a license that has been granted. If a developer is insistent on using its own forms and you are committed to using his or her services, read the contract carefully to make sure you know your long-term rights are protected.

- Before sitting down to draft Exhibit A, decide what your goals are. It can contain any agreed-on terms but should, at a minimum, include a description of the specific development tasks, the amount to be paid, the terms of payment, deadlines for completion, the implementation plan, installation and acceptance tests, and the specific end products expected (if any). Clarify the terms and conditions of your agreement before memorializing them in writing.
- Discuss with the other party the anticipated functionality and technological requirements of the website. Consider, among other things, the following:
 - Developer's use of the most current technology
 - Maximum download times
 - Inclusion of a low-graphics option
 - Compatibility with browser software
 - The number of users that will be able to access the site at one time
 - Security safeguards
 - Integration with the company's intranetIf any of these terms are essential to your agreement, include them in your Exhibit A.
- Depending on how specific you want to get with your contract, you may want to include descriptions of the website's purpose and goals, text content, graphic content, main page, sub-page, navigation and organizational scheme, headers and footers, and features/functions/scripts.
- Allow each party to spend time reviewing the agreement and (once drafted) Exhibit A. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.
- The enclosed document is drafted in a way that elevates the company's interests over those of the developer. If you believe this agreement is too imbalanced for your purposes, or too restrictive to allow the developer to perform his or her duties, revise or restructure certain provisions to fit your organizational goals.
- Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly on the document.
- A written agreement is only the first step in establishing an individual's independent contractor status. Once signed, both parties must follow its terms exactly to make sure that status is maintained.
- Review your state's laws governing independent contractors. In recent years, states have made it more difficult for individuals to qualify, imposing absolute requirements about the freedom a contractor must have from company control. Certain provisions in the enclosed agreement may need to be strengthened or adapted to fit your state's rules.
- Sign two copies of the agreement, one for you and one for the other party.

- Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Website Development Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement. You can use the sample included in this packet as a starting point when revising or drafting your own website development contract.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to provisions in the form. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as a website development agreement. Write in the date on which the agreement is signed. Identify the parties and, if applicable, what type of organization(s) they are (e.g., individual, corporation, partnership, etc.). Note that each party is given a name (e.g., "Company") that will be used throughout the agreement. As you probably guessed, the hiring party is called the "Company" and the website developer is called the "Developer."
- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information about the parties. As a whole, the recitals state the intent and ability of the parties to hire the Developer to create the Company's website. Provide a brief description of the Company's business in the blank provided.
- **Section 1: Purpose.** An explanation of why the parties are entering the contract. Essentially, this section confirms the parties' agreement that the Developer will create the Company's website. The details of this agreement will be provided more specifically in Exhibit A.
- **Section 2: Compensation.** The parties' promise that compensation will be made for the Developer's services. However, this section again defers to the description of payment that will appear in Exhibit A. The bracketed statement should be used if the compensation will be made in installments (rather than all at once). If this is not true of your agreement, delete the bracketed sentence.
- **Section 3: Term.** Indicates that the agreement will last as long as it takes to complete the agreed-on services or until the parties agree to terminate it. The bracketed sentence is optional, and simply emphasizes that the contract will not end until the Developer's warranties about the website expire.
- **Section 4: Termination.** Explains that certain actions or events will cause the agreement to end out of time (i.e., before the services or the website have been completed as required under the contract terms). The parties can both terminate the contract by giving sufficient notice to the other party, or if the other party breaches their obligations and does not fix this breach. In both cases, the party seeking to end the contract must give notice of its intent to do so, and you and the other party to your agreement should determine how much or how little notice will be sufficient in your case. Write in the amount of notice a party must give of its intent to terminate or to notify the other of a breach.

This section also explains that after termination, the Company must pay for any services already completed and the Developer must return the Company's intellectual property to it. Enter the amount of time that the Developer has to return those items.

- **Section 5: Responsibilities.** Lists each party's responsibilities under the Agreement. The items provided are in no way meant to be exhaustive or universal. If one clause doesn't relate to your agreement, feel free to delete it. There are also spaces for you and the other party to insert additional obligations (e.g., on the Developer's request, the Company will test and provide regular feedback about the Website as it is being constructed). Delete this subsection if you do not have additional responsibilities you want to allocate.
- **Section 6: Maintenance.** Clarifies that the agreement is for development purposes only, and that the Developer will not do any long-term maintenance on the site. However, it does provide that for a certain period of time following the development, the Developer will be obliged to perform routine maintenance work. Enter in the period of time that this routine maintenance work will be expected of the Developer. If you and the other party decide that the Developer will be needed to conduct more long-term maintenance, you should enter into a separate agreement to govern each party's rights and responsibilities related to that work.
- **Section 7: Confidential Information.** Defines confidential information for purposes of the agreement and explains how the Developer will treat that information. Note two important details: (1) the Developer can use the information only for purposes intended by the agreement (e.g., if the information was disclosed to help the Developer complete its services, the information can be used only for that purpose); and (2) the Developer can discuss the information only with certain individuals in the Company itself.

Again, the enclosed agreement is constructed in favor of the Company and so does not contemplate the protection of the Developer's confidential information. If you want to include such protection, you can substitute the word "Parties" for "Company," and "each Party" for "Developer," in this paragraph.

- **Section 8: Parties' Representations and Warranties.** Details the parties' promises under the Agreement. These items are, for the most part, unexceptional: they relate generally to each party having the legal right and ability (or being responsible for obtaining the right or ability) to complete its obligations under the contract. If there are other representations and warranties applicable to your situation, feel free to add those here.
- **Section 9: Website Warranties and Representations.** Serves as a promise that the website is guaranteed to be free of material defects for a certain period of time. Obviously, the Internet and technology change rapidly, and the Developer cannot be held responsible for all website problems forever. The parties can agree about how long the warranty period should run. This section also prevents the Developer from hiding hidden "flaws" in the website that would later force the Company to re-hire that Developer to fix them.
- **Section 10: Timing and Delays.** Emphasizes the importance of completing work under the agreement in a timely fashion, and notes the consequences of failing to meet deadlines.
- **Section 11: Nature of Relationship.** Explains that the Developer is not an employee or partner of the Company. This is an important distinction for many reasons, including those relating to insurance coverage, legal liability, and taxes. This agreement seeks to emphasize this divide, but both parties should take care not to blur the line between independent contractor and employee. Review

your state's laws governing independent contractors to make sure that the enclosed agreement follows local restrictions.

- **Section 12: Work For Hire.** Grants ownership of all work performed by the Developer under the Agreement to the Company, including completed products and material produced during creation. Moreover, if any work is in fact owned by the Developer, the Developer promises to assign its interest in any such work to the Company.
- **Section 13: No Conflict of Interest; Other Activities.** The Developer's promise that it is not currently working with other company or product that competes with the Company. Note that this section is not a complete restriction on the Developer's other business activities: the Developer can perform still perform tasks for other companies as long as those tasks don't damage the Company or its interests.
- **Section 14: Return of Property.** This is an extremely important provision, and although it may seem obvious to you that property should be returned after the end of the agreement, this paragraph makes that plain. This section also reiterates that documents and property provided to the Developer under this Agreement remain Company property.
- **Section 15: Indemnification.** This provision allocates responsibilities between the parties if problems arise in the future and protects each party from the consequences of the other's negligent or intentional conduct.
- **Section 16: Intellectual Property.** Each party's promise that their property and work don't infringe on any third party's intellectual property rights. It also states the Developer will not use the Company's trademarks inappropriately or acquire a trademark of its own that is similar to the Company's. For example, an independent contractor for XYZ can not apply for a trademark on Sam's XYZ Products. This section provides that the Developer may not continue to use the Company's trademarks after the agreement terminates.
- **(Optional) Section 17: Authorship Credit.** An optional provision the parties can use to allow or prohibit the Developer from inserting its name onto the Website as evidence that it created it. If you choose to include this section, be sure to indicate which party has the right to demand that the name be deleted from the website. If you remove this section, correct the section numbers and references in the agreement.
- **(Optional) Section 18: Laws Affecting Electronic Commerce.** An optional provision explaining that the Company will be solely responsible for any commercial taxes levied against the website. This may not be necessary if you are not selling items on your webpage, or if you have a different agreement with your developer. If you remove this section, correct the section numbers and references in the agreement.
- **Section 19: Amendments.** Indicates that any changes to the Agreement are ineffective unless they are made in writing.
- **Section 20: Assignment.** Explains that if either party wants to assign its obligations and interests under the Agreement, it must first obtain the other party's written permission.
- **Section 21: Successors and Assigns.** States that the parties' rights and obligations will be passed on to heirs or, in the case of companies, successor organizations or organizations to which rights and obligations have been permissibly assigned.

- **Section 22: Force Majeure.** Releases a party from its obligations if its performance is made impossible by an event beyond its control (e.g., flood, earthquake, etc.). This release is effective only as long as circumstances continue to prevent that party's completion of its tasks.
- **Section 23: No Implied Waiver.** Explains that if either party allows the other to ignore or break an obligation under the agreement, it does not mean that party waives any future rights to require the other to fulfill those (or any other) obligations.
- **Section 24: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Developer.
- **Section 25: Governing Law.** Allows the parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the applicable state law in the blanks provided.
- **Section 26: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 27: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire document. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the agreement enforceable.
- **Section 28: Entire Agreement.** The parties' agreement that the document they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 29: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the note.
- **Exhibit A: Duties, Specifications, and Compensation.** There are two examples of [Exhibit A](#) provided. These items are meant as samples only. You can choose either and adapt it to your individual needs, or come up with a third structure better suited to your agreement.

DISCLAIMER

LegalZoom is not a law firm. The information contained in the packet is general legal information and should not be construed as legal advice to be applied to any specific factual situation. The use of the materials in this packet does not create or constitute an attorney-client relationship between the user of this form and LegalZoom, its employees or any other person associated with LegalZoom. Because the law differs in each legal jurisdiction and may be interpreted or applied differently depending on your location or situation, you should not rely upon the materials provided in this packet without first consulting an attorney with respect to your specific situation.

The materials in this packet are provided "As-Is," without warranty or condition of any kind whatsoever. LegalZoom does not warrant the materials' quality, accuracy, timeliness, completeness, merchantability or fitness for use or purpose. To the maximum extent provided by law, LegalZoom, its agents and officers shall not be liable for any damages whatsoever (including compensatory, special, direct, incidental, indirect, consequential, punitive or any other damages) arising out of the use or the inability to use the materials provided in this packet.

WEBSITE DEVELOPMENT AGREEMENT

This Website Development Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date") by and between _____, a _____ [individual/corporation/partnership/etc.] (the "Developer"), and _____, a _____ [corporation/partnership/etc.] (the "Company," and together with the Developer, the "Parties").

RECITALS

WHEREAS, the Company is engaged in _____ [describe business]; and

WHEREAS, the Developer is engaged in the business of developing and designing websites on the Internet; and

WHEREAS, the Company wishes to engage the Developer as an independent contractor for the Company for the purpose of designing the Company's website (the "Website") on the terms and conditions set forth below; and

WHEREAS, the Developer wishes to develop the Website and agrees to do so under the terms and conditions of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, the Parties agree to the following terms and conditions, which shall constitute the entire agreement between them, and the Parties hereby agree to be bound by the terms and conditions of this Agreement.