



Web Site Development Agreement

Document 4069A

www.leaplaw.com

Access to this document and the LeapLaw web site is provided with the understanding that neither LeapLaw Inc. nor any of the providers of information that appear on the web site is engaged in rendering legal, accounting or other professional services. If you require legal advice or other expert assistance, you agree that you will obtain the services of a competent, professional person and will not rely on information provided on the web site as a substitute for such advice or assistance. Neither the presentation of this document to you nor your receipt of this document creates an attorney-client relationship.

WEB SITE DEVELOPMENT AGREEMENT

This WEB SITE DEVELOPMENT AGREEMENT is made this ___ day of _____, 20__ (the “**Agreement**”) by and between [NAME OF DEVELOPER], a _____ corporation (the “**Developer**”) [or if Developer is an individual, [NAME OF DEVELOPER], an individual residing at [ADDRESS], and [COMPANY NAME], a _____ (the “**Client**”).

WITNESSETH:

WHEREAS, Client wishes to engage Developer in web site development services, to plan, design, build, implement, develop, test, and deliver a web site, database and Intranet to be known as [“NAME OF WEB SITE”] (“**DOMAIN NAME**”) as a work made for hire and to host and maintain the [DOMAIN NAME] on Developer’s Web Server and make the [DOMAIN NAME] available for browsing on the Internet; and

WHEREAS, Developer wishes to engage in such work; and

WHEREAS, Client 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, Client and Developer, intending to be legally bound, hereby agree as follows:

1. Term and Termination. This Agreement shall be effective as of the date first written above and shall remain in full force and effect for a period of [DURATION], unless otherwise terminated as provided in Section 1.2 (Termination for Cause).

1.1 Termination of Work. Client may, at its sole discretion and without cause, terminate any or all work outstanding, or any portion thereof, immediately upon written notice provided pursuant to Section 12 (Miscellaneous Provisions). Upon receipt of notice of such termination, Developer shall inform Client of the current status of development through such date and immediately collect and deliver to Client whatever work product and deliverables then exist in a manner prescribed by Client. Developer shall be compensated according to the terms of this Agreement for all work performed through the date of receipt of such notice of termination.

1.2 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) day period, the breaching party fails to cure such breach. Notice must be provided via certified mail and pursuant to Section 12 (Miscellaneous Provisions).

2. Developer's Responsibilities.

2.1 Scope of Work. Client hereby retains the services of Developer to plan, design, build, implement, develop, test, and deliver, and host a Web Site and Intranet (collectively the

“**Web Site**”) for Client in accordance with the proposal submitted by Developer to Client dated [DATE] (the “**Proposal**”), a copy of which is attached hereto as Exhibit A. When used in this Agreement, the capitalized terms shall have the meanings provided in Exhibit B attached hereto.

2.2 Schedule. Developer will develop a prototype model of the [DOMAIN NAME] and will have it completed within [NUMBER] weeks after Client has provided the prototype source materials requested by Developer in accordance with this Agreement. The prototype will demonstrate at least one sample of each type of page of [DOMAIN NAME]. Developer will conduct a "walk through" of the prototype at a date and time mutually agreeable to each party but within [NUMBER] week(s) of the scheduled completion of the prototype. Client shall have [NUMBER] week(s) from the date of the "walk through" to specify required changes and specifications (if reasonable in number and nature) to the prototype and to address issues not contemplated by the specifications. Client may also specify changes that vary from the specifications within this time. If such changes from specifications involve significant additional work, the parties will negotiate a fair price for the additional work or, if the parties cannot agree on a price, Client will, at its sole discretion, either proceed with the initial specifications or terminate this Agreement. Developer will implement the changes that Client specifies for the prototype within [NUMBER] week(s) after receiving Client's additional changes, and will then provide a "walk through" of the revised prototype at a date, time and place mutually agreeable to Client and Developer but within [NUMBER] week(s) of the scheduled completion of the changes. This review process will continue until such time as the prototype is approved in writing by the Client or until this Agreement is terminated. Developer shall begin construction of the final Web Site only after Client has approved the prototype. The prototype may be reviewed by Client "on line" at any point in lieu of or in addition to any “walk through”, and at any other time, at the Client's sole discretion. Developer agrees to notify Client 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 cause any material delay in the Schedule.

2.3 Timing For Development Of The Final Web Site. Developer shall complete the final Web Site within [NUMBER] month(s) of Client's approval of the prototype or of receipt of the source materials requested in accordance with this Agreement (whichever is later), and shall conduct a "walk through" of the final product at a date, time and place agreeable to Client and Developer within [NUMBER] week(s) of the scheduled final completion date. This process will continue until the final Web Site is approved in writing by the Client or until this Agreement is terminated in the sole discretion of the Client.

2.4 Demonstration at Trade Show. Developer shall demonstrate [DOMAIN NAME] during the trade show to be held in [CITY/STATE] on [DATE] with [NAME OF PROMOTER] (the “**Trade Show**”). Client shall provide Developer with appropriate space for such demonstration and pay all fees and reasonable expenses associated with the Trade Show. Developer shall provide all necessary computers and personnel to effect such demonstration.]

3. **Web Site Design**

3.1 Design. The design of [DOMAIN NAME] shall be in substantial conformity with the source material provided to Developer by Client. Developer shall develop [DOMAIN NAME] to project the highest professional image. Developer shall not include any of the following in

[DOMAIN NAME] or in Client's directory on Developer's Web Server: text, graphics, sound, or animations that might be viewed as offensive or related in any way to sex or any other illegal activities; links to other Sites that might be viewed as offensive or related in any way to sex or any other illegal activities; impressionistic or cartoon-like graphics (unless provided by Client); invisible text, metatags (i.e., text that is recognized by a "Webcrawler" or other Web indexing tool), or any other type of hidden text, hidden information, hidden graphics, or other hidden materials; or destructive elements or caustic programming of any type.

3.13.2 Materials Provided by Client. All materials to be supplied by Client may be provided on floppy disks, ZIP cartridges or via File Transfer Protocol (FTP). Files will be provided in HTML ASP, Cold Fusion or other professionally acceptable format, standard word processing text format. Images may be provided as bitmaps, TIFF's, GIF's, JPEG's or Photoshop files.

3.3 Specifications for Home Page. ["DOMAIN NAME"] will consist of a Home Page (the introductory page) that can accessed by typing [NAME URL(S)] into a Web Browser: Developer will use its best efforts to register the domain name for the benefit of Client (or such other name or names as may be registrable and acceptable to Client) for a period of [NUMBER] years. Developer will immediately assign all rights thereto to Client. Client agrees to pay all registration fees associated with such registration or registration(s).

3.4 Accessibility of Web Site During Construction. Throughout the construction of the prototype and the final Web Site, [DOMAIN NAME] shall be accessible to Client via the Internet with the use of user identification codes and passwords that will be supplied by Developer following the approval of the initial prototype.

3.5 Project Planning Meetings. The parties shall plan weekly Project Planning Meetings at Client's principal office or at another mutually convenient location and at a mutually convenient date and time to discuss project planning matters.

3.6 Submission to Search Engines. At the time that Developer conducts the first "walk through" of final version of [DOMAIN NAME], Developer will register Client's preferred Domain Name(s) with the following search engines: Google, Yahoo! and any other search engines the Client may add at that time.

3.7 Delivery of Deliverables. Upon Client's approval of its final Web Site, or upon termination of this Agreement, (whichever is earlier), Developer shall deliver to Client all source code, object code, database files, design, analysis or architecture documentation, reports, and other materials and all changes and enhancements thereto (excepting, third party operating system software, third party networking software, Web Browsers, and hardware) developed by Developer in the course of its development of [DOMAIN NAME] and any other items reasonably necessary for the operation of Client's Web Site (the "**Deliverables**"). Documentation shall be delivered in printed or electronic format. All source or object code shall be delivered in electronic format. The transfer of electronic materials shall be accomplished by copying them to floppy disks, ZIP cartridges, or via FTP. Files will be provided in HTML, ASP, Cold Fusion or other professionally acceptable format, standard word processing text format or, if images, as bitmaps, TIFF's GIF's, JPEG's or Photoshop files. Developer shall maintain its backup files and one set of the final materials provided to Client for a period of [NUMBER] month(s) after Client's approval of

[DOMAIN NAME]. If this Agreement is terminated prior to final approval, or at the expiration of this [NUMBER] month(s) period, Developer shall destroy all of its copies of the [DOMAIN NAME] (including all backup files thereof) and “wipe” all files constituting final or working copies of [DOMAIN NAME] (other than the final copy hosted on Developer’s Web Server and one backup copy thereof) from Developer’s computers and backup materials unless otherwise directed in writing by Client.

4. Web Hosting

4.1 Web Hosting. Developer agrees, at Client’s sole discretion, to host and maintain [DOMAIN NAME] on Developer’s Web Server on a [MONTH-TO-MONTH, QUARTERLY OR OTHER] basis, and to make maintenance modifications to [DOMAIN NAME] from time to time in accordance with Client’s directions. Such modifications shall be implemented within [NUMBER] (___) business days of Developer’s receipt of Client’s changes if the changes are easily implemented, and within [NUMBER] (___) business days of Developer’s receipt of Client’s changes if the changes are not easily implemented. Developer agrees to make its best effort to make [DOMAIN NAME] available on the Internet approximately twenty-four (24) hours per day, to backup [DOMAIN NAME] at least once every [NUMBER] (___) weeks, and to store said back-up materials in a safe and secure environment, fit for the back-up media, and at a location other than the Developer’s Web Server location. Developer also agrees to use its best efforts to ensure reasonable response times to all issues causing [DOMAIN NAME] to be unavailable.

4.2 Back-Up Copies. Upon notice from Client not more often than once each month, and also in the event of Client’s termination of its use of Developer’s Web Server as the host for [DOMAIN NAME], Developer agrees to transfer a complete copy of Client’s then-current Web Site, including all source code therefor, to Client, said transfer to occur by either copying them to floppy disks, ZIP cartridges or via FTP. Files will be provided in HTML, ASP, Cold Fusion or other professionally acceptable format, standard word processing Text format or, if images, as bitmaps, TIFF’s GIF’s, JPEG’s or Photoshop files. The transfer method will be selected by Client in its sole discretion no later than twenty four (24) hours before the set time of transfer. In the event such transfer results from Client’s termination of its use of Developer’s Web Server as the host for [DOMAIN NAME], Developer shall maintain one complete electronic version of [DOMAIN NAME], including all source code therefore (and shall “wipe” all other versions thereof off of its computers and media, including back-up copies), until Client informs Developer in writing that the transferred files appear to be complete. Upon Client’s written approval, Developer shall “wipe” its final copy of [DOMAIN NAME] off of its computers and all related network systems.

4.3 Transaction Logging. During the time that [DOMAIN NAME] is located on Developer’s Web Server, Developer will make available on a monthly basis and free of charge an analysis of Web Site traffic, including source IP address, number of visitors per day, number of hits per day, most commonly viewed and downloaded pages and any other such data reasonably requested by Client. Developer shall set aside a portion of its server, such portion only accessible via user name and password by Client’s staff, in which such analysis resides. The analysis may be viewed or printed out by Client at its sole discretion.

5. Compensation.

5.1 Price for Web Site Creation. The total price for all of the work set forth in this Agreement (excluding the Server Hosting and excluding post-approval modifications not implemented by Client and any disbursements for expenses such as reserving Domain Names) shall be [\$_____] (the “**Development Fee**”). This price covers all work of whatever nature on [“DOMAIN NAME”] contemplated in this Agreement. Work will commence once Client has forwarded to Developer the [INITIAL DEPOSIT] (the (“**Initial Deposit**”). Client will pay the balance due to Developer [BALANCE DUE] (“the “**Balance Due**”) once [“DOMAIN NAME”] is deemed to be operational in a form reasonably acceptable to Client.

5.2 Web Hosting Fees. The fee for the Web Hosting shall be \$_____ per month (the “**Hosting Fee**”). Charges for post-approval modifications to any web pages or changes or additions to the material on [DOMAIN NAME] (including the database) shall be free of charge if such changes or additions are submitted to Developer by Client in “ready to implement” HTML, ASP, Cold Fusion or other professionally acceptable format. The fee for Hosting shall not increase for a period of [NUMBER] (__) year(s) from the date of Client’s acceptance of its final Web Site. The Hosting Fee shall be commence on the date the final Web Site is fully operational and accepted by Client and future Hosting Fees shall be due and payable on subsequent monthly anniversary dates of such operational date.

5.3 Invoicing. Developer shall invoice Client on a [MONTHLY] basis for the amount of work done during the applicable [NUMBER] week period. All payments are due [NUMBER (___)] days after receipt of a properly payable invoice. If there is a dispute with regard to whether work was actually completed or whether an invoice is properly payable, the amount of the invoice in dispute shall not be due until the dispute is resolved.

5.4 Expenses. With the exception of reservation of Domain Name(s), the prices set forth above are inclusive of expenses. Except as expressly agreed otherwise in writing, Developer shall bear all expenses arising out of its performance of its obligations under this Agreement, including, without limitation, expenses for facilities, work spaces, utilities, management, clerical and reproduction services, supplies.

5.5 Portfolio Site. Developer may make reasonable references to the Client and [DOMAIN NAME] for marketing purposes, including describing the Client and [DOMAIN NAME] as a portfolio company. Client agrees that it will identify Developer as [DOMAIN NAME] developer in an appropriate manner on its web site. Developer may not issue any press release that refers to Developer’s work for Client without Client’s prior written approval, which may be withheld for any reason or for no reason at all.

6. Confidentiality.

6.1 Confidential Information. “**Confidential Information**” shall mean any and all tangible and intangible information relating to technical data, trade secrets, know-how, management, operations, finances, and products or services of Client or Developer and their affiliates, including but not limited to software programs and systems, plans, projections, existing and proposed and contemplated projects or investments, formulae, processes, methods, products,

manuals, information, contracts, correspondence and similar or dissimilar information or other confidential information disclosed by any party hereunder in writing, orally, or by drawing or other form and which shall be marked by the disclosing party as “**Confidential**” or “**Proprietary**” relating to the business of Client, whether developed by Client or Developer or provided by others.

If such information is disclosed orally, or through demonstration, in order to be deemed Confidential Information, it must be specifically designated as being of a confidential nature at the time of disclosure and reduced in writing and delivered to the receiving party within [NUMBER] (____) days of such disclosure.

With respect to the Confidential Information, Client and Developer each will:(a) advise their employees, agents and subDevelopers with permitted access to the other’s Confidential Information as to its confidentiality; (b) require their employees, agents and subDevelopers with permitted access to the other’s Confidential Information to use a degree of care appropriate for the protection of the Confidential Information, but in any event not less than reasonable care; and (c) use the Confidential Information only for the purposes for which it was provided.

6.2 Exclusions. Notwithstanding the foregoing, this confidentiality provision shall not extend to either party’s Confidential Information that the party wishing to disclose can demonstrate: (a) was in the possession of the other party or its agents or employees prior to disclosure to the other party by the owner; (b) becomes public knowledge without the fault of the other party or its agents or employees; (c) is disclosed to the other party from any third party not under a confidentiality obligation to the owner; or is required to be disclosed pursuant to a lawful order of a court or government agency; provided that the proprietor is given advance notice of such disclosure and an opportunity to contest such order.

6.3 Nondisclosure. Developer agrees that it will not disclose any Confidential Information to any third party and will not use Client’s Confidential Information for any purpose other than for the performance of the rights and obligations hereunder during the term of this Agreement and for a period of [NUMBER (____)] years thereafter, without the prior written consent of the Client, which may be withheld at its sole discretion. No license shall be granted by Client to Developer with respect to Confidential Information disclosed hereunder unless otherwise expressly provided herein.

6.4 Return of Confidential Information. Upon the request of the Client, Developer will promptly return all Confidential Information furnished hereunder and all copies thereof.

6.5 Remedy for Breach of Confidentiality. If Developer breaches any of its obligations with respect to confidentiality and unauthorized use of Confidential Information hereunder, Client shall be entitled to equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as monetary damages notwithstanding anything to the contrary contained herein.

7. Ownership and Rights.

7.1 Ownership of Work Product. Except as set forth below, all elements of all Deliverables shall be exclusively owned by Client and shall be considered “**Works Made for Hire**,” pursuant to U.S. copyright laws by Developer for Client. Except as set forth below, Client

shall exclusively own all U.S. and international rights, title and interest in and to [DOMAIN NAME] and all its graphical, textual and other contents, or any portion of [DOMAIN NAME], including but not limited to all copyrights and any other intellectual property rights therein. Developer hereby assigns to Client all rights, title and interest in and to [DOMAIN NAME]. This assignment is undertaken in part as a contingency against the possibility that any such element, by operation of law, may not be considered a work made for hire by Developer for Client. Client and its successors and assigns shall have the right to obtain and hold in its own name all copyright or trademark registrations and other evidence of rights that may be available for the Deliverables and any portion(s) thereof.

Developer shall be free to use any ideas, concepts, or know-how developed or acquired by Developer during their performance of this Agreement to the extent obtained and retained by Developer's personnel as impressions and general learning.

7.2 Preexisting Works. In the event that any portion of any Deliverable (including the entirety thereof) constitutes a preexisting work for which Developer cannot grant to Client the rights set forth in Section 7.1 (Ownership of Work Product), Developer shall specify below: (a) the nature of such preexisting work; (b) its owner; (c) any restrictions or royalty terms applicable to Developer's or Client's use of such preexisting work or Client's exploitation of the Deliverable as a Derivative Work thereof; and (d) the source of Developer's authority to employ the preexisting work in the preparation of the Deliverable. The works set forth above will be referred to as "**Preexisting Works.**" The only Preexisting Works that may be used in the construction of any Deliverable are the Preexisting Works specified above and any Preexisting Works that may be approved in writing by Client prior to their use.

7.3 Indemnification. Developer agrees to use its most diligent efforts not to design, develop, or provide to Client any Work Product that infringes or may possibly infringe upon any 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 in the course of performing any work hereunder, it shall immediately so notify Client in writing via certified mail. Developer agrees to indemnify, defend, and hold harmless the Client, its officers, directors, members, employees, representatives, agents 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 all attorney fees and expenses. .

8. Agreements with Employees. No individuals or entities other than Developer and Developer's employees and independent Developers shall undertake any work in connection with this Agreement. Developer shall obtain and maintain in effect written agreements with each of its employees who participate in any of Developer's work hereunder. Such agreements shall contain terms sufficient for Developer to comply with all provisions of the Agreement and to support all grants and assignments of rights and ownership hereunder. Such agreements also shall impose an obligation of confidence on such employees with respect to Client's confidential information. It shall be sufficient compliance with this provision of the Agreement if each such employee reads this Agreement and indicates their consent to abide by its terms by signing and dating this Agreement or by initialing and dating this paragraph of this Agreement. Nothing contained herein shall limit Developer's ability or right to use independent Developers provided that such independent Developers agree to be bound by the terms of this Agreement.

9. Representations and Warranties. Developer makes the following representations and warranties for the benefit of Client:

9.1 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. Client 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.

9.2 Ownership Rights. Developer represents and warrants that (a) it is and will be the sole author of all works employed by Developer in preparing any and all Deliverables other than Preexisting Works; (b) 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; (c) 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 (d) 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.

9.3 Conformity, Performance, and Compliance. Developer represents and warrants that (a) all Deliverables shall be prepared in a professional, workmanlike manner (b) all Deliverables will function under standard HTML, ASP, Cold Fusion or other professionally acceptable conventions; (c) all Deliverables will conform to the specifications set forth in this Agreement; and (d) Developer will perform all work in compliance with applicable laws. For the entire term of this Agreement, if any defect does not meet this warranty or negatively affects the usability of [DOMAIN NAME], Developer agrees to repair such Deliverable within a reasonable period of time, and otherwise repair the defect within twenty-four (24) hours, all said repairs to be free of charge to Client. This warranty does not cover third-party links that may change over time, pages that may become obsolete, content that may become outdated, or other changes that do not result from any error on the part of Developer.

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

11. Relationship of Parties.

11.1 Independent Developer. It is expressly understood and agreed that during the term of this Agreement, Developer's relationship to Client will be that of an independent Developer and that neither this Agreement nor the Services to be rendered hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship. Accordingly,

Developer shall have sole and exclusive responsibility for the payment of all federal, state and local income taxes, for all employment and disability insurance and for Social Security and other similar taxes with respect to any compensation or benefits provided by Client hereunder. Developer shall assume and accept all responsibilities which are imposed on independent Developers by any statute, regulation, rule of law or otherwise.

11.2 No Agency. Client does not undertake by this Agreement or otherwise to perform any obligation of Developer, whether by regulation or contract. In no way is Developer to be construed as an agent or to be acting as the agent of Client in any respect. Developer is not authorized to bind Client or to incur obligations and liabilities on behalf of Client.

12. Miscellaneous Provisions.

12.1 Governing Law; Jurisdiction; Venue. This Agreement will be construed in accordance with and governed by the laws of the [____], without giving effect to the conflict of law principles of the [____]. Developer and the Client specifically agree that any legal action relating to this Agreement will be instituted and prosecuted in the courts in [NAME OF COUNTY] County, [NAME OF STATE]. Each party hereby waives the right to change venue, and consents to personal jurisdiction for purposes of any action arising under this Agreement.

12.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

12.3 Notices. All notices and payments provided for in this Agreement shall be provided in writing and shall be effective when either served by hand delivery, electronic facsimile transmission, express overnight courier service, electronic mail or by registered or certified mail, return receipt requested, addressed to the parties at their respective addresses set forth below, or to such other address or addresses as either party may later specify by written notice to the other:

if to the Client:

fax: _____

e-mail: _____

Attention: _____

if to the Developer:

fax: _____

e-mail: _____

Attention: _____

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 12.3 (Notice). All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

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

12.5 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) "or" has the inclusive meaning frequently identified with the phrase "and/or," (d) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (e) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

12.6 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

12.7 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

12.8 Dispute Resolution. The parties shall submit any dispute arising under, out of, or in connection with this Agreement to mediation in [STATE] under the applicable Mediation Rules of the American Arbitration Association. All costs of such mediation shall be borne equally by the parties. If such dispute is not entirely resolved through mediation, any unresolved matters relating to such dispute shall be determined and settled by arbitration in [STATE] pursuant to the Rules of the American Arbitration Association for resolution of commercial disputes. Any award rendered therein shall be final and binding on all parties hereto and judgment may be entered thereon in any court of appropriate jurisdiction. All costs of such mediation shall be borne equally by the parties. All costs of such arbitration may be allocated among and awarded to the parties per the arbitrator's sole discretion.

12.9 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

[The Remainder of this Page has been intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed this Independent Developer Agreement as of the date first written above.

[CLIENT NAME]

By: _____
Name: _____
Title: _____

[DEVELOPER]

[Name]

[DEVELOPER PROPOSAL]

DEFINITIONS

When used in this Web Development Agreement, the capitalized terms listed below shall have the following meanings:

“Code” shall mean HTML, XHTML, Cold Fusion, ASP, Javascript, SQLServer or any other professional computer programming/formatting code, any files necessary to make image maps function, and any server or source code necessary to make forms, buttons, check-boxes, and similar function.

“Deliverables” shall mean all Source Code, Object Code, Documentation, reports, and other materials developed by Developer in the course of its performance under this Agreement, and any other items necessary for the operation of [DOMAIN NAME] (other than third-party operating system software, third-party networking software, Web Browsers, and hardware), including any and all Enhancements thereto.

“Derivative Work” shall mean any and all work that is based upon one or more preexisting works, such as a revision, modification, translation, abridgment, condensation, expansion, or any other form in which such preexisting works may be transformed, revised or adapted (including via linking a preexisting work into the Derivative Work so that a Web Browser would display the preexisting work within the Derivative Work), and that, if prepared without authorization of the copyright owner in such preexisting work, would constitute a copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such a preexisting work.

“Documentation” shall mean any and all written or typed materials that relate to Code, including materials useful for design such as logic manuals, flow charts, and principles of operation that may be developed by Developer in the course of its performance under this Agreement.

“Enhancements” shall mean changes or additions to Code and related Documentation.

“Error” shall mean any error, problem, omission or defect resulting from (1) an incorrect functioning of Code, (2) information displayed on a Web Page that is inconsistent with information provided by Client, (3) incorrect sequencing of Web Pages, or (4) any failure of the Deliverables to meet Client specifications.

“Internet” shall mean the World Wide Web as it is a network of computers commonly understood to provide some or all of the following features: electronic mail, file transfers through File Transfer Protocol (“FTP”), Telenet access to local and remote computers, UseNet Newsgroups, Gopher access to information on local and remote computers, Wide Area Information Servers (“WAIS”), and World Wide Web access.

“Outside Web Site” shall mean any Web Page or other material that can be accessed using a Web Browser and that is not part of [DOMAIN NAME].

“Web Browser” means software designed to allow interactive access to the World Wide Web (and in some cases to other Internet resources as well), including, without limitation, Netscape Navigator, Mosaic, MacWeb/WinWeb, Cello, and Lynx.

“Web Page” means a document or file that is formatted using HTML and that is intended to be accessible by Internet users with a Web Browser.

“Web Server” means the computer or computers that Developer uses to make Web Sites accessible to Internet users approximately 24 hours per day.

“Web Site” means a series of interconnected Web Pages residing in a single directory on a single Web Server.

“World Wide Web” means all of the Web Pages that are accessible to a typical computer user with appropriate access to the Internet and a Web Browser.