Section 1.0 Brief Summery Agreement

1.0 Initial Agreement

We will always do our best to fulfill your needs and meet your goals, but sometimes it is best to have a few simple things written down so that we both know what is what, who should do what and what happens if events go wrong. We have no desire to trick you into signing something that you might later regret, nor do we wish to participate in an arrangement that is not mutually beneficial. We want what's best for the safety and prosperity of both parties, now and in the future.

1.1 Signature

This Agreement is between "David Eddy" (hereto referred to as ”'The Consultant'”) and (Client Name) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereto referred to as “Customer”, “the customer”, “Client”, or other references to the receiving party) located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. 'The Consultant' is being hired by the Client for the purpose of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereto referred to as "service", "services", or "deliverables") at the estimated total cost of $1200 as outlined in this Agreement.

**1.2 Abilities & Power**

As our customer, you agree that you have the power and ability to enter into this contract on behalf of your company or organization. You agree to provide us with everything we need to complete the project including text, images and other information as and when we need it; and in the format that we ask for. You agree to review our work, provide feedback and sign-off approval in a timely manner. You also agree to stick to the payment schedule laid out in this contract.

Section 2.0 General Agreement Overview

The Consultant will provide consulting services to the Customer relating to the creation or modification of a Website. The specific nature of the services to be provided by The Consultant will be as specified in the Schedule ("The Services"). Subject to any lawful restraint imposed upon it by any other party (such as an obligation as to confidence), The Consultant will make available to the Customer all knowledge, information and expertise in its possession in performing the Services. If the Customer wishes The Consultant to perform any services other than those specified in the Schedule (including without limitation to provide any additional functionality) or to provide further or other Products or software, then The Consultant shall be entitled to quote the Customer separately for the provision of those services or the provision of those products or software. If the Customer accepts that quotation, then the provisions of this Agreement will apply to the provision of those additional services, products or software.

**2.1 Timely Performance of Duties and Costs**

The Consultant will not be liable to the Customer or to any third-party for any non-performance or delay in the performance of its obligations under this Agreement if events or conditions beyond its reasonable control cause the non-performance or delay and The Consultant gives the Customer prompt notice thereof. In no event will this provision affect Customer's obligation to make payments to The Consultant under this Agreement except in respect to Services that are unable to be performed by The Consultant, until they can be performed.

**2.1.1 Additional Notices or Addendums**

Any notice required or contemplated by this Agreement shall be deemed to have been duly given if it is in writing, properly addressed and delivered personally or mailed by registered or certified mail, postage prepaid, or by electronic mail to the Customer or The Consultant at the address set out in the Schedule or this Agreement or such other address nominated by a party in writing.

**2.1.4 Failure, Delay or Relaxation of Right**

A failure, delay, relaxation or indulgence by either Party in exercising any right, power or privilege conferred on the Party by this Agreement shall not operate as a waiver of the power or right. A single or partial exercise of any right, power or privilege hereunder does not preclude the further exercise of the same right or the exercise of any other right hereunder. A waiver of a breach does not operate as a waiver of any other breach.

**2.1.5 Invalid Provisions**

If any part of this Agreement is held by a court in the location designated by this agreement per section 2.1.5.3 to be invalid then;

2.1.5.1 Offending Provision Validation

Where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and

2.1.5.2 Severance of Provision

In any case the offending provision must be severed from this Agreement the remainder of this Agreement shall continue in full force and effect unless such reading down or severance affects the basic nature of this Agreement.

*2.1.5.3 Location of Jurisdiction*

This Agreement shall be governed by and must be construed in accordance with the laws of The State of Florida, in the United States of America, and the Customer submits to the exclusive jurisdiction of the courts of this location.

**2.3 Commencement of Services**

Unless otherwise agreed in writing by the parties, the term of this Agreement will commence on the date specified in the Schedule.

**2.5 Entitlement to Charge**

The Consultant will provide Services to the Customer and will be entitled to charge the Customer for such Services at the rates specified in the Schedule.

3.0 Reporting, Meetings, and Contact

3.1 Customer Contact Personnel

The Customer shall make its representative (specified in the Schedule or such other person as the Customer shall nominate in writing as the "Customer Contact") available to meet with The Consultant when reasonably required by The Consultant for the purposes of discussing the status of the Services or Products. The Consultant will meet regularly with the Customer Contact (by remote communication facility if necessary) and report to the Customer on the status of the Services.

4.0 Means of Access and Security thereof

4.1 Entitlement of Remote Services

The Consultant shall be entitled to provide the Services remotely from its own premises and will not be required to attend the Customer's premises. If The Consultant must attend the Customer's premises for any reason pursuant to this Agreement, the Customer will reimburse The Consultant for reasonable transport and/or accommodation expenses incurred by The Consultant in doing so. However this does not include transport or accommodation expenses where the Customer's premises are located within 25 miles of the permanent location of The Consultant provided in this agreement.

**4.2 Authorization of Access**

The Customer authorizes The Consultant to obtain access to the Customer's computing facilities referred to in the Schedule (the "Facilities") using the remote means of access referred to in the Schedule ("Means of Access") and subject to any Restrictions on Access set out in the Schedule, for the purposes of providing the Customer with Services.

4.2.1 Means of Access

The Customer will provide The Consultant with all reasonable assistance and facilities free of charge (including without limitation of the Means of Access and other Items referred to in the Schedule, office facilities, and liaison with the necessary officers and employees of the Customer) in order to permit The Consultant to efficiently provide the Services.

**4.3 Proper Use of Access**

The Consultant will not use the Means of Access (or any other methods of remote access) to access the Facilities for any purpose other than to provide the Services. However, The Consultant shall be permitted to gain remote access to the Facilities for lawful purposes using any publicly available means (such as the World Wide Web, File Transfer Protocol, Remote Desktop Access, or any other means), which may or may not require special authorization, and shall be able to access such services without obtaining authorization for each occurrence of access.

4.4 Security of Access

The Consultant will take the following steps to ensure the security of the Facilities (insofar as the use of The Consultant's systems and the Means of Access are concerned):

4.4.1 Password Storage

Ensure that no passwords are stored in an easily recognizable form on

The Consultant's own systems;

4.4.2 Authorized Personnel

Ensure that only those employees and contractors of The Consultant who are required to access the Facilities using The Consultant's systems and the Means of Access are able to do so.

4.6 Facilities Security

Ensuring that the Facilities are not capable of being accessed by a system or user that transits The Consultant's own systems, except as permitted by this Agreement.

**4.7 Indemnifying The Consultant against Losses or Damage**

The Customer indemnifies The Consultant against any losses or damages arising directly or indirectly from any unauthorized access or use of the Facilities to which The Consultant has been granted remote access, provided that such unauthorized access or use has not arisen as the result of any material breach by The Consultant of its own obligations under Section 4, and its sub-sections, of this Agreement.

**4.8 Reimbursement due to Access Costs**

The Customer will also reimburse The Consultant for all expenses incurred by The Consultant on the Customer's behalf or in carrying out its obligations under this Agreement.

5.0 Invoice / Payment Cycle

5.1 Entitlement to Invoice

The Consultant will be entitled to invoice the Customer on a basis as laid out in the Agreement for any Services performed or Products supplied during the previous billing segment (or during any earlier period which has not previously been invoiced) together with such expenses as the Customer is required to reimburse The Consultant. Such invoices shall contain such information and detail as the Customer may reasonably require to permit the Customer to account for the Services and Products (for instance, by attaching copies of any time sheets) requested by the Customer.

5.2 Payment Due

All invoices rendered by The Consultant are payable within seven (7) days from the date of invoice. The Customer agrees to pay The Consultant in full within this time period for the stated amount of the Invoice.

5.3 Denial of Service

If the Customer does not pay said Invoice within the allotted time as laid out within this Agreement or other subsequent Agreements, The Consultant reserves the right to impress upon the customer, up to and including denial of further services, denied of use of Products acquired for the Customer during the course of the Services, and denial of access the Services, Products, or completed work, until Invoice(s) are paid in full.

5.4 Continual Past Due Invoices

If the Customer fails to pay any invoice by the due date for payment, then without prejudice to The Consultant's rights under this Agreement, the Customer shall also pay The Consultant interest on the outstanding amount at the rate of 5% per month on all past due amounts.

6.0 Privacy of Confidential Information

6.1 Non disclosure

The Consultant will not disclose to any third-party or use other than for the purposes of this Agreement any knowledge or information imparted to or obtained by it during or in connection with the fulfillment of this Agreement which is of a secret or confidential nature relating to the business, equipment, processes relating to the equipment, the products, services, process or business strategies offered or employed by the Customer. This obligation of confidence will cease to apply in relation to information that The Consultant is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by The Consultant of its obligations of confidence under this Agreement.

7.0 Copyright and Intellectual Property rights

7.1 Copyright & Rights

Unless otherwise agreed in writing by The Consultant, the copyright and all other rights relating to any software provided to the Customer by or on behalf of The Consultant pursuant to this Agreement (the "Intellectual Property") will remain the property of The Consultant or where applicable its licensors.

7.2 Use of Property Upon completion of Agreement

Upon payment in full for the Services provided by or on behalf of The Consultant pursuant to this Agreement, The Consultant grants the Customer a non-exclusive and non-transferable perpetual license to use the Intellectual Property for the Customer's own business purposes, and in the case of the third-party software, will obtain a sub-license in favor of the Customer in similar terms.

7.3 Right to Grant Licenses per 3rd Party Services

The Consultant warrants to the Customer that to the best of its knowledge, it has the right to grant the licenses referred to in this Agreement, and the use by the Customer of any software provided by The Consultant will not infringe the rights of any third party.

7.4 Usage of Property Internally to Customer Operations

The Consultant also grants the Customer the right to copy the Intellectual Property for the purposes of staff and subcontractor education and system backups. However, the Customer must not copy any of the Intellectual Property for any other purposes.

7.5 Decompile, Disassemble, Decrypt, Reverse Engineering, etc.

The Customer must not de-compile, disassemble, decrypt, extract or otherwise reverse engineer any part of any software that is provided to the Customer by The Consultant without The Consultant's prior written consent.

7.6 Disclosing Property to 3rd Parties

7.6.1 Customer

The Customer must hold any software (in source and/or in object code) and other materials provided to the Customer by The Consultant confidential. The Customer must not disclose any of those materials to any third-party without The Consultant's prior written consent. The Customer must also take all reasonable steps within its power to protect the Intellectual Property of The Consultant.

7.6.2 The Consultant

The Consultant reserves the right to provide materials of the Service or Products to any party The Consultant authorizes internally or to sub-contractors for education, backup, redundancy, marketing, or any other purpose The Consultant sees fit without the prior consent of the Customer and without the option for the customer to object to such actions.

8.0 High Risk Activities

8.1 High Risk Activities Prohibition

None of the software or the Products provided pursuant to this Agreement is designed or intended to be fault-tolerant or designed or intended for use as or for use where their failure or malfunction could lead to death, personal injury, or economic, physical or environmental damage ("High Risk Activities"). The term "High Risk Activities" includes but is not limited to on-line control equipment in hazardous environments requiring fail-safe performance (such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, direct life support machines, weapons systems, banking or financial control or reporting systems, or security systems). The Customer warrants that it will not use, distribute or resell any of the Products or the software for any High Risk Activities and that it will ensure that permitted end-users of such Products or software are provided with a notice in the form set out in this Clause. The Customer will indemnify The Consultant for any loss, cost, damage or third-party claim arising from the Customer's use of any of the Products in High Risk Activities or from any breach by the Customer of this clause.

9.0 Liabilities, Warranties, Damages, and/or Replacements

9.1 Extend Permitted by Law

To the extent permitted by the law, The Consultant expressly excludes all conditions and warranties whether express or implied.

9.2 The Consultant Liability to 3rd Parties

Notwithstanding any other provision in this Agreement, in no event will The Consultant be liable to any party including the Customer for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including for loss of profits, use, data, or other economic advantage), however it arises, whether for breach of this Agreement or in tort, and even if The Consultant has been previously advised of the possibility of such damage. Further, liability for such damages shall be excluded, even if inclusive remedies provided hereunder fail their essential purpose. The Customer will indemnify The Consultant and keep it indemnified from and against any claims by any third party for or in respect of such damages.

9.3 Warranties

Certain provisions relating to the trading of goods and services and other statutes, rules and regulations in the United States of America may imply certain non-excludable warranties or conditions. To the extent that they are not permitted to be excluded, The Consultant's liability for breach of such conditions or warranties and the Customer's sole and exclusive remedy in relation to such breaches shall be limited to the cases of Products or software or other goods supplied by The Consultant, at The Consultant's option:

9.3.1 Replacement

The replacement or repair of those Products or software or goods, or the supply of equivalent goods; or

9.3.2 Payment

The payment of the cost of replacing or repairing the Products or software or goods or of acquiring equivalent goods; and/or in the case of Services, at (Web development company name)'s option:

9.3.3 Re-Service

Supplying the Services again; or

9.3.4 Payment of Re-Service

The payment of the cost of having the Services supplied again.

**9.4 Obligation Pursuant to Conditions outside Control**

9.4.1 Notice

The Consultant shall, to the best of its abilities and facilities, notify the Customer to situation outside of its control by the facilities The Consultant has at its disposal at the time of notice. The Consultant will not be liable to the Customer or to any third party for any non-performance or delay in the performance of its obligations under this Agreement.

9.4.2 Damages

Pursuant to this Agreement The Consultant shall not be held liable, in any form or to any party, damages caused by the inability to render Services to the Customer.

9.4.3 Payment

In no event will this provision affect the Customer's obligation to make payments to The Consultant under this Agreement, except in respect to Services that are unable to be performed by The Consultant until they can be performed.

9.4.4 Other Delays

The Consultant will not be held liable damages or other unforeseeable situations that are outside reasonable control that cause damages in any form.

10.0 Data Backup and Redundancy

10.1 Sole Responsibility

The Customer is solely responsible for the proper backup and protection of all of its software and data, as well as the implementation and maintenance of firewalls and security measures (including proper virus control, malware protection, data backup, etc) in relation to the Facilities.

10.2 The Consultant Backups

The Consultant reserves the right to keep a copy of the final products of labor for show, reference, or any activity allowed under the non-exclusive rights usage.

10.3 Customer Backups

The customer is allowed to make backups and keep said backups at any time of its own and private use. Backups are allowed to be stored in a third-party location for security only.

11.0 Non Exclusive Services

The Customer acknowledges that The Consultant is providing Services to the Customer on a non-exclusive basis and that The Consultant may provide services of the same and / or a similar nature as the Services to any other party without the consent or prior knowledge of the Customer.

12.0 Termination

This Agreement may be terminated in the following circumstances:

12.1 Both Parties

By either party by giving the other party thirty (30) days notice in writing to that effect;

**12.2 Immediately by The Consultant due to Breach of this Agreement**

Immediately by The Consultant by notice in writing if the Customer fails to remedy a breach of this Agreement (including any provision as to payment) within fourteen (14) days of receipt of a notice from The Consultant of such breach requiring it to do so; or

**12.3 Either Party Due to Legal Action**

By either party immediately by notice in writing if the other party takes any corporate action or other steps are taken or legal proceedings are started (and are not withdrawn, discontinued or struck out within twenty-one days) for its winding up, liquidation or dissolution (other than for the purposes of reconstruction) or the appointment of an administrator, receiver, receiver and manager, official manager, Liquidator, Provisional Liquidator, trustee or similar office of it or of any or all of its revenues and assets ("Insolvency Event"), and such Insolvency Event remains in existence in respect of such party as the time of service of the Notice.

**12.4 Payment upon Termination**

On termination of this Agreement however occurring, all moneys unpaid by the Customer pursuant to this Agreement will immediately become due and payable. If such moneys remain unpaid for a period of thirty days then (without prejudice to any other rights that The Consultant may have for breach of this Agreement or otherwise) The Consultant will be entitled to retake possession of the Products and to disable any software provided pursuant to this Agreement (including by remote means).

**12.5 Post Termination of Agreement and Clauses Therein**

All clauses that can remain in effect after termination shall stay in effect after termination. This includes but is not limited to Copyright, High Risk, Copyright, Intellectual Property, and Liability.

**12.6 Payment Termination Points**

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13.0 Move / Add / Change (MAC) requests:

A MAC request is defined as any processes that requires labor, time, capital, or other assets be directed towards a previously completed piece of work.

Each MAC request will be calculated per what is needed for that one change. Requests are bound by this agreement as well; even if not noted or stated in the MAC agreement / invoice. The Consultant reserve all rights to deny a MAC request for any reason without explanation prior to the MAC agreement being signed and enveloped by this agreement.

15.0 Schedule ("The Services").

|  |  |
| --- | --- |
| The Customer:  Customer Company: |  |
| Customer Address: |  |
| Customer Telephone: Customer Alt. Phone: |  |
| Customer Fax: |  |
| Customer Contact Person(s): |  |
| Customer Email: |  |
| Commencement Date: |  |
| The Services: |  |
| Project Costing Estimate | $1200 |
| The Items to be provided by the Customer: | Concept PSD files for GUI/interface, color swashes, Logos (in AI format). |
| Means of Remote Access: | HTTP(S), Web Portal, (S)FTP,  Web portal for Domain administration, .NET configuration, account setup |
| Restrictions on Remote Access: |  |

|  |  |
| --- | --- |
| Signed on Behalf of 'The Consultant': | Signed on Behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: |
| Name:  Title:  Date: | Name:  Title:  Date: |