

Website Services Agreement

This WEBSITE SERVICES AGREEMENT ("Agreement") is an agreement between WebRudder, LLC ("WebRudder" or "Company") and the service recipient ("Customer" or "you") incorporated herein by this reference together with any subsequent written quotes and/or written invoices, (the "Order") and applies to the purchase of all design, development, programming, consulting, and website services requested by Customer and specified as part of the Order (collectively, referred to as "Services" or "Website Services"). The Order is made up of one or more written quotes and/or written invoices, which lists Services and may detail requirements for the Services. Any Services and/or requirements not specified in this Agreement or the Order are not under contract and will not be provided. The parties understand, acknowledge and agree that they are entering into this Agreement. Our latest policies and agreements are posted at www.webrudder.com/policies. We reserve the right to modify this Agreement at any time with or without notice. Use of any services or products provided by WebRudder is governed by any applicable policy, agreement, and term posted at www.webrudder.com/policies. Any "written" notice provided by the Company may be delivered (but not limited to) via email; as such, an emailed notice by Company shall be deemed "written" notice.

Inquiries regarding this Agreement should be directed to WebRudder, LLC at support@webrudder.com.

PLEASE READ THIS AGREEMENT CAREFULLY.

THE DIGITAL ACCEPTANCE OF WEBRUDDER POLICIES, AGREEMENTS, AND TERMS DURING ACCOUNT CREATION OR PAYMENT IN FULL OF ALL INVOICES INCLUDED IN THE ORDER CREATES A CONTRACT BETWEEN CUSTOMER AND COMPANY, CONSISTING OF THIS AGREEMENT, THE ORDER AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT. THE DIGITAL ACCEPTANCE OF WEBRUDDER POLICIES, AGREEMENTS, AND TERMS DURING ACCOUNT CREATION OR PAYMENT IN FULL OF ALL INVOICES INCLUDED IN THE ORDER CONSTITUTES ACCEPTANCE OF THIS AGREEMENT AND ALL APPLICABLE POLICIES, AGREEMENTS, AND TERMS POSTED AT www.webrudder.com/policies.

1. TERM AND TERMINATION

A. Term of Agreement. This Agreement shall be effective as of the earlier date of either the digital acceptance of Company policies during account creation or payment in full of all invoices included in the Order by the Customer. Company cannot guarantee the Delivery Date but will use commercially reasonable efforts to perform the Services in an efficient and timely manner.

B. *Termination.* This Agreement may be terminated by either party upon written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice. This Agreement may be terminated by Customer at any time without cause if Customer: (i) provides Company sixty (60) days written notice, (ii) pays and forfeits all due non-refundable fees (as defined in the *Fees* section below and collectively referred to as “Non-Refundable Fees”), and (iii) pays Company for costs incurred by Company during the execution of this Agreement (only if the sum of such incurred costs are in excess of the Non-Refundable Fees already paid by Customer). This Agreement may be terminated by Company (i) immediately if Customer fails to pay any fees hereunder; or (ii) if Customer fails to cooperate with Company or hinders Company's ability to perform the Services hereunder.

2. COMPANY'S AND CUSTOMER'S RESPONSIBILITIES

A. *Scope of Work.* Customer hereby contracts the Company to provide the Services specified in this Agreement and the Order. Any Services not specified in this Agreement or the Order are not under contract and will not be provided.

B. *Changes.* Customer initiated changes to this Agreement, the Order or to any of the specifications of the Services shall become effective only when a written change request is executed by the Customer and agreed upon in writing by Company ("Change Order"). Any agreed upon changes will be incorporated into an updated Order. Company agrees to notify Customer within 60 days of any factor, occurrence, or event that comes to its attention that may affect Company's ability to meet the requirements of this Agreement, or that is likely to occasion any material delay in the Services. In the event of a conflict between the terms of this Agreement and a Change Order, the terms of this Agreement shall govern.

C. *Customer's Responsibilities.* Customer agrees to perform all tasks assigned to Customer as set forth in this Agreement or the Order, and to provide all assistance and cooperation to Company in order to complete timely and efficiently the Services. Company shall not be deemed in breach of this Agreement, the Services, the Order, or any milestone in the event Company's failure to meet its responsibilities and time schedules is caused by Customer's failure to meet (or delay in) its responsibilities and time schedules set forth herein, the Order, or this Agreement. In the event of any such failure or delay by Customer (i) all of Company's time frames, milestones, and/or deadlines shall be extended as necessary; and (ii) Customer shall continue to make timely payments to Company as set forth in this Agreement or the Order as if all time frames, schedules, or deadlines had been completed by Company. Customer shall be responsible for making, at its own expense, any changes or additions to Customer's current systems, software, and hardware that may be required to support operation of the Services. Unless otherwise contracted with Company or reflected in this Agreement or the Order, Customer shall be responsible for providing and maintaining all content for the Website Services. With the execution of a separate Order the Company may agree to perform some of these tasks at a separate contracted rate.

3. WEBSITE SERVICES

A. *Consultation.* Consultation will be provided as deemed necessary by the Company. Customer will provide direction to Company via support ticket, face to face meeting, email, or phone and will deliver content for the Website Services electronically.

B. *Completion Date.* Company and the Customer shall work together to deliver the Website Services in a commercially reasonable manner. A delay may occur if the Customer fails to supply Company with requested content within two (2) weeks of the date of the Order unless otherwise noted.

C. *Design.* Any design services executed by Company as part of this Agreement or the Order shall be in substantial conformity with the material provided to Company by Customer.

D. *Content.* Text, images, and other content will be supplied by the Customer unless otherwise stated in this Agreement or the Order. Customer understands that submissions may be interpreted at the Company's sole discretion. As such, the Customer is encouraged to provide as much instruction and direction as possible with each submission.

E. *Hosting.* Unless otherwise noted in this Agreement or the Order, development of Website Services will take place on the Company's infrastructure. Development may also be within the Customer's established or newly created web hosting service with Company.

F. *Accessibility During Construction.* Throughout the construction of the prototype and the final Website Services, portions of the Website Services may be accessible to Customer for review only when made available by the Company.

G. *Website Services Delivery & Acceptance.* Website Services will be considered delivered to Customer upon written notice from Company to Customer indicating completion or upon signing of the Website Delivery Acceptance Agreement by the Customer or upon payment in full of all invoices associated with the Order by the Customer. Website Services are to be deemed complete and accepted by the Customer upon signing of the Website Delivery Acceptance Agreement by the Customer or upon payment in full of all invoices associated with the Order by the Customer.

H. *Usage Rights, Ownership, and Requirements of Use.*

Customer acknowledges, understands and agrees that Company may use its own and/or may purchase licenses or otherwise use third party products, software, or services that are necessary for Company to deliver the Website Services. Such products and services may include, but are not limited to: Company developed software and source code, third party developed software and source code (including but not limited to custom programmed or modified source code), the use or reliance on Company developed and/or operated web services, the use or reliance on third party developed and/or operated web services, server-side applications, source code (including custom programmed source code), "back-end" applications, design or other templates, programming components, programming add-ons, programming plug-ins, images, stock images, clip art, music, style sheets, documentation or any Company copyrighted work which Company

deems necessary in order to deliver the Website Services (such products and services are collectively referred to as "Enabling Content").

Customer shall own all worldwide right, title, and interest of Customer content provided to Company for inclusion into the system/website, content entered into system/website by Customer, and in any unaltered Customer provided content; Company will have no ownership, right, title, or interest in this content.

The Company grants the Customer, to the extent of Company's legal ability, a single transferable license without expiration to freely use and modify with unlimited permission the delivered Enabling Content. The Customer may sell the delivered Enabling Content and transfer this single transferable license to another party, but cannot sell copies of or additional licenses to any Enabling Content. Customer and Company agree that, to the extent of Company's legal ability, Company shall retain ownership and a worldwide, royalty-free, non-exclusive, transferable, and perpetual right and license to the Enabling Content including, but not limited to, the right to modify, amend, create derivative works, rent, sell, assign, lease, sublicense, or otherwise alter or transfer the Enabling Content. Customer and Company also agree that anything delivered as part of the Website Services may include Enabling Content that was used in other Website Services delivered by Company or Enabling Content that is currently in Company's possession or will be obtained by Company; such Enabling Content may be modified to meet Customer's specific requirements.

Customer acknowledges and understands that any Enabling Content that is owned by Company and/or such third parties is only licensed and ownership cannot be transferred to Customer and is hereby specifically not transferred to Customer and shall remain the property of Company and/or such third parties. Any Enabling Content which is owned and/or purchased by Company may be used to deliver Website Services for or separate from Customer. Customer agrees to be bound by the licenses, terms of service, privacy policies, and any other legal bindings that results from the use of the Enabling Content in or by the delivered Website Services. Further, it is Customer's responsibility to identify and be aware of these licenses, terms of service, privacy policies, and any other legal bindings that results from the use of the Enabling Content including but not limited to the user of the Enabling Content in or by the delivered Website Services. Company will not use any license in the delivered Enabling Content that Customer could not independently obtain a license for at the time of delivery. At the sole discretion of the Company, portions of the delivered Website Services (including any Enabling Content) may be delivered in a compiled or machine code form for reasons not limited to the protection of the proprietary content of the Company or the Company's vendor.

Company and its subcontractors retain the right to display graphics and other elements of the delivered Website Services as examples of their work in their respective portfolios.

4. MAINTENANCE AND CHANGES

The company provides a free 60 day warranty as defined in the *Representations and Warranties* section below. The Company is not required to provide any services beyond this warranty unless specifically outlined in this Agreement or the Order. Any additional changes, updates, maintenance, or services beyond this warranty period will require a new and separate Order.

5. FEES

The total price for all of the work set forth in the Agreement is the total of all of the written quotes and written invoices that make up the Order (collectively referred to as the "Website Services Fee"). Unless otherwise stated in this Agreement or the Order, a non-refundable amount of half of the Website Services Fee is due and payable to the Company upon placing the Order and Company shall have no obligation to perform any work until payment is received and such funds are cleared from the relevant financial institution. The other half of the Website Services Fee is due on the date that the Website Services are deemed delivered ("delivered" is as defined above in *Website Services* section, sub-section *G. Website Services Delivery & Acceptance*). Customer acknowledges that there may be some additional reoccurring fees associated with keeping the delivered Website Services current and operational. For example, these additional reoccurring fees may include but are not limited to hosting fees, domain registration fees, SSL certificate fees, fees required to keep any needed third party licenses current, fees related to the use of Enabling Content, and so on. The Customer acknowledges that they are responsible for any such fees. In some cases (such as when using open source or third party products) charging for certain services, products, or source code is not allowed; in all cases any payments made to Company are payments for legally chargeable services, which may include but are not limited to consulting and/or custom development. No refunds shall be provided for Company's services hereunder. Notwithstanding the foregoing, the Customer may claim, as damages, that portion of the non-refundable fee paid as provided herein, if Company breaches this Agreement.

6. INDEMNIFICATION

A. Customer Indemnity. Customer shall indemnify and hold harmless Company (and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by Company as a result of any claim, judgment, or adjudication against Company related to or arising from (a) the use of Enabling Content in the Website Services for Enabling Content provided by Customer to Company or by Company to Customer, or (b) a claim that Company's or Customer's use of the Enabling Content in the Website Services infringes the intellectual property rights of a third party. To qualify for such defense and payment, Company must: (i) give Customer prompt written notice of a claim; and (ii) allow Customer to control, and fully cooperate with Customer in, the defense and all related negotiations.

7. REPRESENTATIONS AND WARRANTIES

A. Company makes the following representations and warranties for the benefit of Customer:

1. *No Conflict.* Company 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 Company under this Agreement and the Order. Customer understands that Company is currently working on one or more similar projects for other clients. Provided that those projects do not interfere or conflict with Company's obligations under this Agreement, those projects shall not constitute a violation of this provision of the Agreement.

2. *Conformity, Performance, and Compliance.* Company represents and warrants that (1) all deliverables shall be prepared in a workmanlike manner and with professional diligence and skill; (2) all deliverables will conform to the specifications and functions set forth in this Agreement; and (3) Company will perform all work called for by this Agreement in compliance with applicable laws. Company will repair any identified deliverable issues that would result in the deliverable not meeting this warranty for a period of 60 days following the date when the Website Services are deemed delivered ("delivered" is as defined above in *Website Services* section, sub-section *G. Website Services Delivery & Acceptance*), said repairs will be free of charge to the Customer during this 60 day period. This warranty does not cover links that change over time, pages that become obsolete over time, content that becomes outdated over time, licenses that expire over time, or other changes that do not result from any error on the part of Company.

3. *Disclaimer of All Other Warranties.* EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, WEBRUDDER, LLC PROVIDES ITS SERVICES "AS IS", WHERE-IS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. COMPANY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN ITS WEBSITE SERVICES WILL MEET ALL OF THE CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE WEBSITE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE WEBSITE SERVICES IS WITH CUSTOMER. THE PARTIES AGREE THAT (A) THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY EACH PARTY, AND (B) EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THIS AGREEMENT, PERFORMANCE OR INABILITY TO PERFORM UNDER THIS AGREEMENT, THE CONTENT, AND EACH PARTY'S COMPUTING AND DISTRIBUTION SYSTEM. IF ANY PROVISION OF THIS AGREEMENT SHALL BE UNLAWFUL, VOID, OR FOR ANY REASON UNENFORCEABLE, THEN THAT PROVISION SHALL BE DEEMED SEVERABLE FROM THIS AGREEMENT AND SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF ANY REMAINING PROVISIONS.

4. *Limitation of Liability.* IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, LOST PROFITS, WHETHER OR NOT FORESEEABLE OR ALLEGED TO BE BASED ON BREACH OF WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY, ARISING UNDER THIS AGREEMENT, LOSS OF DATA, OR ANY PERFORMANCE UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. THE MAXIMUM REMEDY AVAILABLE TO EITHER PARTY IS ANY AMOUNT PAID BY CUSTOMER HEREUNDER. COMPANY MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY PRODUCTS, THIRD PARTY CONTENT OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD PARTIES.

B. Customer makes the following representations and warranties for the benefit of Company:

1. Customer represents to Company and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, other artwork, as well as, any other content furnished to Company for use in the Website Services are owned by Customer, or that Customer has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend Company and its subcontractors from any claim or suit arising from the use of such elements furnished by Customer.

2. From time to time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. Customer agrees that the client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend Company and its subcontractors from any claim, suit, penalty, tax, or tariff arising from Customer's exercise of Internet electronic commerce.

C. *Confidentiality.* The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "Proprietary or Confidential Information" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) is subject to disclosure under court order or other lawful process. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party's proprietary or confidential information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the

other party other than as specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief.

8. FORCE MAJEURE

The Company will not 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 the Company's reasonable control and that the Company is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will contact the other Party and will use commercially reasonable efforts to minimize the impact of the event.

9. RELATIONSHIP OF PARTIES

A. Independent Contractor. Company, 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. Company shall be solely responsible for and shall hold Customer harmless for any and all claims for taxes, fees, or costs, including but not limited to withholding, income tax, FICA, and workers' compensation.

B. No Agency. In no way is Company or Customer to be construed as the agent of the other or to be acting as the agent of the other in any respect, any other provisions of this Agreement notwithstanding.

10. NOTICE AND PAYMENT

A. Unless otherwise stated in this Agreement or the Order, a non-refundable amount of half of the Website Services is due and payable to the Company upon placing the Order and Company shall have no obligation to perform any work until payment is received and such funds are cleared from the relevant financial institution. The other half of the Website Services Fee is due on the date that the Website Services are deemed delivered ("delivered" is as defined above in *Website Services* section, sub-section *G. Website Services Delivery & Acceptance*).

11. JURISDICTION/DISPUTES

This Agreement shall be governed in accordance with the laws of the State of Florida. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Florida including the federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

12. AGREEMENT BINDING ON SUCCESSORS

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

13. ASSIGNABILITY

Customer may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of Company. Company reserves the right to assign subcontractors as needed to this project to ensure on-time completion.

14. WAIVER

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

15. SEVERABILITY

If any term, clause or 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 term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

16. INTEGRATION

Within the scope of this Agreement: (i) 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. (ii) This Agreement shall not be modified or amended by Customer except in writing signed by the Parties hereto and specifically referring to this Agreement. (iii) This Agreement shall take precedence over any other documents which may conflict with this Agreement.

17. NO INFERENCE AGAINST AUTHOR

No provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.

18. DISPUTES

Customer and Company agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through negotiation. Should the parties fail to resolve any such disagreement within forty-five (45) days, any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, shall be submitted by either party to arbitration in Orange County, Florida and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by one arbitrator, who shall be (a) selected in the sole discretion of the American Arbitration Association administrator and (b) a licensed attorney with at least ten (10) years experience in the practice of law and at least five (5) years experience in the negotiation of technology contracts or litigation of technology disputes. The arbitrator shall have the power to enter any award that could be entered by a judge of the state courts of Florida sitting

without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the State of Florida or any other applicable law. The arbitrator must issue his or her resolution of any dispute within sixty (60) days of the date the dispute is submitted for arbitration. The written decision of the arbitrator shall be final and binding and enforceable in any court having jurisdiction over the parties and the subject matter of the arbitration. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court.

19. ADDITIONAL AGREEMENT TERMS

None.

20. READ AND UNDERSTOOD

You acknowledge that you have read and understand this Agreement and agree to be bound by its terms and conditions.

21. DULY AUTHORIZED REPRESENTATIVE

You warrant that you are a representative that is duly authorized personally or by all necessary and appropriate corporate actions to execute this Agreement.
