

WEBSITE DESIGN AND DEVELOPMENT AGREEMENT – WORK FOR HIRE

This Website Design and Development Agreement (the "Agreement") is made and effective [DATE],

BETWEEN: **MTwo** (the "Developer"), with its head office located at:
2/289 Colombo Street, Sydenham, Christchurch, 8023

AND: **[YOUR COMPANY NAME]** (the "Customer"), with its head office located at:
[YOUR COMPLETE ADDRESS]

1. BACKGROUND INFORMATION

- A. The Developer is in the business of designing websites and has experience in the industry.
- B. The Customer wishes to have a website created meeting the specifications (Exhibit "A") set forth herein ("Website") and to make such website available through the Internet.
- C. The customer is the current registered owner of the Internet domain name [ADDRESS], which shall be the URL at which the Website shall be located.

NOW THEREFORE, in consideration of the covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

2. CREATION OF WEBSITE

2.1 Engagement of Developer

Customer hereby engages the services of the Developer for the purpose of designing, creating, testing and delivering a fully functional Website, to be delivered to the Customer in the form of Hypertext Markup Language ("HTML"), JAVA and/or FLASH languages, most current version, which meets the specifications set forth herein and which is fully ready and operational upon placement on a server and creation of necessary connections for availability on the World Wide Web.

2.2 Delivery Responsibilities of the Customer

Within [NUMBER] days from the date of execution of this Agreement, Customer will deliver the items listed in Exhibit "B" attached hereto to the Developer. The items described in Exhibit "B" shall include all content to be included in the Website, including but not limited to textual materials, logos, photographs, sound files, databases, video files and other Website content ("Website Content") required to be included in the Website as described in the specifications, but excluding those items that shall be the responsibility of the Developer to create as provided in Section 2.3 below. All such Website Content shall be delivered to Developer on a USB Flash drive. Logo files shall be in GIF format, photographs shall be in JPG format, written text shall be in Microsoft Word format, video files shall be in MPEG format, and sound files shall be in Mp3 file format.

2.3 Developer Created Content

As provided in Section 2.2 above, the Customer shall be responsible for delivering all Website Content except for those items that Developer has specifically agreed to create pursuant to the terms of this Section 2.3. Developer shall have the obligation as part of its duties hereunder to create the Website Content listed in Exhibit "C" attached hereto. In developing the Website Content listed in Exhibit "C" hereto, Developer is authorized to utilize such subcontractors as Developer may desire.

2.4 Site Plan and Site Mockup

The Website to be designed by the Developer shall be in substantial conformity with the site map and Website "mockup" attached hereto as Exhibit "D."

2.5 Hidden Text

Developer shall not include any hidden text or codes in the development of the Website except as specifically requested by the Customer. Notwithstanding the above, the Customer hereby directs the Developer to include Meta Tags on the Website which include the keywords set forth in Exhibit "E" attached hereto.

2.6 Placement of Site During Development

Developer shall create a password protected access site to make the Website available for review by the Customer periodically through the development stage. Developer will notify the Customer of the location of the Website and the method for gaining access to the Website. The password assigned to the Customer shall be unique to the Customer and shall not be provided by either party to any other party except the Customer and the Developer.

2.7 Stages of Completion

Developer shall use its reasonable efforts to meet the completion schedule attached hereto in Exhibit "F." It is contemplated by the parties that the final completion and delivery date shall be as indicated on Exhibit "F." However, Customer acknowledges and agrees that any changes or deviations in the specifications, site plan, mockups, graphics, or any other element of the Website, and Customer delays in fulfilling Customer's responsibilities, include delivering Site Content and promptly reviewing and commenting on completed work will lead to delays in the completion schedule.

2.8 Form of Delivery

The final Website shall be delivered to the Customer on the requested host platform.

2.9 Links

All links contained in the Website shall be tested and confirmed to be accurate prior to delivery of the final Website to the customer.

2.10 Acceptance Period

Customer shall have a period of [NUMBER] days following delivery of the final Website during which Customer may engage in testing of the Website. Customer shall notify the Developer no later than the [th] day following delivery of any items contained in the Website that do not conform to specifications. In the event that the Customer does not so notify the Developer within the [NUMBER] day period, Customer shall be deemed to have accepted the Website in all respects.

2.11 Correction of Deviations From Specification

Developer shall have a period of [NUMBER] days following receipt of written notification from Customer as provided in Section 2.10 above to correct any items raised by the Customer into conformance with the specifications and to deliver such corrected items to the customer. Customer shall have a period of [NUMBER] days after delivery of the revisions to notify the Developer of any further non-conformance with the specifications. Developer shall have a period of [NUMBER] days after receipt of this notification to make corrections. This procedure shall continue until such time as Customer makes final acceptance of the Website.

2.12 Back-Up Copy of Website

Developer shall retain a backup of the Website files relative to the accepted Website for a period of seven days following final acceptance by the Customer. Thereafter, Developer shall destroy all copies of the Customer's Website, unless Developer is providing hosting of the Customer's Site pursuant to a separate hosting Agreement.

3. COMPENSATION FOR DEVELOPER SERVICES

3.1 Development Fee

In consideration of the services to be performed by the Developer hereunder, including the delivery of a completed Website meeting the specifications set forth and referred to herein, the Customer shall pay to Developer a total development fee ("Development Fee") equal to [AMOUNT], which shall be payable as set forth in the Schedule of Payment referred to in Section 3.2, below.

3.2 Schedule of Payments

Customer shall pay to Developer, upon execution of this Agreement, an amount equal to 50% as the initial payment for Developer's services provided hereunder. Thereafter, the remainder of the Development Fee shall be paid to the Developer at the times described in the Schedule of Payments set forth and attached hereto as Exhibit "G."

3.3 Stages of Development; Invoice

Upon achievement of the various stages of development that require an additional payment to be made to Developer, Developer shall notify the Customer in writing that such stage of development has been reached and shall deliver such deliverables that corresponds to that stage of development to the Customer, together with an invoice for the amount due at such stage of development. Customer shall make payment on such invoice within seven days after receipt of such invoice.

3.4 Pass Through Expenses

The parties acknowledge and agree that all expenses associated with the development process, including but not limited to payment of any licensing fees, software procurement, costs of purchasing graphics, photographs and other web content, materials, supplies, and all other elements of the website development shall be absorbed by the Developer and that the Development Fee set forth above shall be the entire expense to be paid by the Customer hereunder. Notwithstanding the above, Customer is responsible for all costs and expenses not related to the design and development services, such as hosting, domain name registration, marketing, search engine placements, and any other service that is not described or covered by this Agreement.

3.5 Early Termination

In the event that this Agreement is terminated by its terms prior to completion of the Website, Developer shall be compensated only for such work that has been completed prior to the date of termination. Upon termination hereof, Developer shall deliver any partially completed work to the Customer on USB Flash Drive.

4. SEARCH ENGINE SUBMISSIONS

Included within this Development Fee payable hereunder, Developer agrees to submit the completed Website to no more than two major search engines. Customer shall provide the Developer with a list of which search engines shall be included within Developer's services hereunder. Any additional search engine submissions shall be subject to separate agreement between the parties and shall not be included herein. Developer and Customer shall reasonably and in good faith cooperate to optimize the results of the search engine placement. However, Developer cannot guarantee any specific search engine placement.

5. DEVELOPER PUBLICITY

5.1 Listing In Roster of Developer Customers

Following completion of the Website and final acceptance by the Customer, Developer shall be permitted to list the Customer and the Customer's Website on Developer's Website and in any of its marketing and advertising as having been developed by the Developer. The material included on Developer's Website shall include a hypertext link to the Customer's Website. Customer shall have full discretion as to the form and content of such acknowledgment and the appearance of any link.

5.2 Developer Credit On Website

Following completion of the Website and final acceptance by the Customer, and for a period of six months after the Website is launched, Customer shall include a credit to the Developer on the home page of the Website. The credit to the Developer shall be designed and placed on the home page by the Developer but shall be in form and substance that is reasonably acceptable to the Customer. The credit shall also include a hypertext link to the Developer's Website.

5.3 Limited Trademark License

The parties hereby give each other a non-exclusive license to utilize the trademark of the other party, in form reasonably acceptable to the trademark owner, for the purposes set forth in Section 5.1 and 5.2 hereof.

6. PROPRIETARY RIGHTS TO WEBSITE

6.1 Creation of Website As A Work For Hire

The Developer hereby agrees that all materials that are part of the Website and that are created by the Developer, including but not limited to content, text, graphics, logos, pictures, code, scripts, algorithms, applets, audio, video and other materials ("Website Content") shall be considered "works for hire." As such, Customer shall be considered the exclusive owner of all proprietary rights, including but not limited to Federal Copyrights, in and to all such materials. For purposes hereof, the term "work for hire" shall have the meaning defined in the New Zealand Copyright Act. Developer acknowledges and agrees that the Customer shall have all exclusive rights in and to the Website Content that are available to the author or owner of a New Zealand copyright.

6.2 Waiver of Common Law Rights

Developer hereby waives, assigns and transfers onto Customer, any and all rights in and to all Website Content that may exist with respect to the Website content under any and all federal or state common law, statutory law, or otherwise, including but not limited to trade secret rights, privacy rights, moral rights, or any other right thereto.

6.3 Confirmatory Documents and Acts

During the term hereof and at any time thereafter, at the reasonable request of the Customer, Developer will execute further documents and take additional actions necessary to confirm or perfect the rights of the Customer in and to the Website content. This may include but shall not be limited to executing assignments of rights, assisting in the registration of copyrights and other proprietary rights, executing waivers and certificates of originality, and any other reasonable action requested by the Developer.

6.4 Rights To Portions of Website Created By Independent Contractors

Developer agrees that no independent contractors shall be used in the development process or to create any aspect of the Website Content without the written consent of the Customer. In the event that the Customer approves the use of independent contractors, as a condition of such approval, Developer shall obtain, in advance, from each such independent contractor, an agreement assigning the proprietary rights in and to the materials that they create to the Customer.

6.5 Original Work

Developer agrees that all content in the Website shall be the original creation of the Developer which is created for the sole purpose of this project, except as specifically consented to and agreed by the Customer. In the event that the Customer consents to the inclusion of any materials that are created by any other party or that have previously been created by the Developer, Developer agrees that is shall take all actions necessary and expend all funds necessary to procure an unlimited, royalty free, world-wide license for the Customer to use any such materials in connection with the Website, and where required by the Customer, in connection with the Customer's other activities, such as advertising and marketing. Unless otherwise consented to by the Customer, any such license shall be exclusive and no other party shall be permitted to use the subject material for any purpose.

6.6 Hold Harmless

Developer hereby indemnifies and holds the Customer harmless from and against all claims, suits, threats, demands, liabilities, settlements, negotiation costs and expenses, other costs, and attorney fees relative to any third party's claim that the Website or any of the Website content, infringes upon or interferes with any proprietary right of such third party, including but not limited to copyrights, trademarks, trade secrets, privacy rights, moral rights, patents, publicity rights, or any other right that may now or at any time in the future exist under any federal or state law.

6.7 License To Developer of Certain Portions

Customer hereby grants to the Developer the perpetual, non-exclusive, royalty free, worldwide license to use certain of the Website Content described in Exhibit "H" attached hereto. This license is personal to the Developer and may not be assigned or sublicensed without the consent of the Customer, except that Developer may grant a limited license to its future clients if any of the licensed items are included in any website that is created by the Developer in the future. The license granted herein does not extend to any identifying material of the business name or trademarks of the Customer.

7. DEVELOPER REPRESENTATIONS AND WARRANTIES

Developer makes the following representations and warranties to the Customer:

7.1 Full power

Developer has full and unrestricted power and authority to enter into this Agreement and to grant the exclusive rights in and to all Website content to the Customer.

7.2 Sole and exclusive creator

Developer is the sole and exclusive creator of the Website Content and has not created any such materials as a joint work with any other party, through independent contractors, or in any other way that would give any other party any rights in and to the Website Content.

7.3 No pre-existing work

That there are no pre-existing work integrate into the Website Content that have not been disclosed to the Customer and for which the Developer has not obtained a valid license complying with the terms of this Agreement which permits the Customer to exclusively use the Pre-existing Work.

7.4 No liens and infringement

There are no liens, encumbrances or security interests of any nature or kind affecting the Website. None of the Website content infringes upon the proprietary rights of any third party.

7.5 Conformity with latest versions

The Website will perform to all specifications and will have cross-platform uniformity in that it will function in the latest versions of the Microsoft Internet Explorer and Netscape browsers.

8. CONFIDENTIALITY COVENANTS

- A. The parties acknowledge and agree that during the course of the relationship contemplated hereby that they are likely to come into contact and gain knowledge and access to information and materials that the other party deems to be confidential, proprietary or of strategic importance. The parties each agree that they shall maintain the strictest confidentiality of all such materials that they receive concerning the other party hereto. They shall not disclose such confidential information to any other party, shall not use such confidential information for their own purposes, and they shall protect such confidential information from disclosure using the same or higher standards as they use to protect their own confidential information.
- B. The parties agree that confidential information shall be limited to disclosure within the organization of the recipient to those top management personnel and developers with a bona fide need to know such information as a necessary part of their contribution to the performance under this Agreement.
- C. For purposes of this Agreement, confidential information shall include any and all information that is of a proprietary, confidential or trade secret nature, of strategic importance, or is otherwise considered to be confidential or proprietary by the releasing party. Confidential information will include items such as business plans, marketing plans and strategies, formula, processes, data, software source codes, financial information, customer lists, and all other information deemed confidential by the parties. Confidential information shall not include items that are generally available to the public, generally known in the industry, exist in the public domain, is learned from an outside source independent from the relationship established by this Agreement or was known prior to the entering of this Agreement.

9. TERM AND TERMINATION

- A. This Agreement shall commence on the effective date hereof and shall remain in effect until the earlier of the completion of all services called for hereunder to be performed by the Developer, or the earlier termination of this Agreement as provided in this Article IX.
- B. This Agreement may be terminated by the customer, with or without cause, by giving one month written notice of such termination to the Developer.
- C. Customer may terminate this Agreement immediately upon written notice to the Developer in the event that the Developer substantially breaches or defaults under any of Developer's obligations contained in this Agreement or if the Developer is unable to or refuses to perform services hereunder.
- D. Upon the effective date of any termination of this Agreement, all legal obligation, rights and duties arising out of this Agreement shall terminate except that: (i) Customer shall remain obligated to pay any balance due to the Developer for services provided hereunder; (ii) the Confidentiality Restrictions, Ownership of Proprietary Rights Provisions, and Independent Contractor provisions of this Agreement shall continue to apply and shall survive the termination of this Agreement as ongoing covenants between the parties; (iii) Developer shall have the continuing obligation to return to the Customer all tangible and intangible property of the customer and all versions of any Proprietary Products of the customer or developed for the Customer during the effectiveness of this Agreement; and (iv) Developer shall have the ongoing duty and obligation to confirm in

writing and take all reasonable steps to secure proprietary right in the Proprietary Products developed pursuant to this Agreement in the name and exclusive ownership of the Customer.

10. NOTICES

Any notification or written communication required by or contemplated under the terms of this Agreement shall be in writing and shall be deemed to be delivered if transmitted via Email at the Email addresses listed below, except for any notice of termination of this Agreement which shall be in writing and sent by New Zealand Mail, Certified Mail, Return Receipt Requested and shall be deemed to have been delivered [NUMBER] business days after the date of mailing. Email addresses for such notices shall be:

If To Developer: maarty@mtwo.co.nz

If To Customer: [EMAIL ADDRESS]

11. NO ASSIGNMENT

The Services to be performed by Developer hereunder are personal in nature, and Customer has engaged Developer as a result of Developer's unique expertise relating to such Services. Neither this Agreement nor any right, interest, duty or obligation hereunder may be assigned, transferred or delegated by Developer without the express written consent of Customer which consent may be withheld in the discretion of the Customer.

12. INDEPENDENT CONTRACTOR STATUS

The parties agree that Developer shall be an independent contractor and not an agent, employee or representative of Customer. Customer shall have no right to direct or control the details of the Developer's work. Developer shall not receive any fringe benefits or other perquisites that the Customer may provide to its employees and Developer agrees to be responsible for its own business overhead and costs of doing business and to furnish (or reimburse Customer for) all tools and materials necessary to accomplish the services required of the Developer pursuant to this Agreement, and shall incur all expenses associated with performance, except as expressly provided in Exhibits or amendments to this Agreement. Developer shall be responsible for paying all taxes on payments received pursuant to this Agreement and that Customer shall have no obligation to withhold taxes from service fees payable to the Developer hereunder. Developer hereby indemnifies and holds the customer harmless any obligation that may be imposed on Customer (i) to pay in withholding taxes or similar items or (ii) resulting from Developer's being determined not to be an independent contractor.

13. ARBITRATION

Except as specifically provided in this Agreement, the parties agree that any dispute or controversy arising out of, relating to or in connection with the interpretation, validity, construction, performance, breach or termination of this Agreement shall be submitted to binding arbitration to be held in [STATE/PROVINCE] in accordance with the rules of [ASSOCIATION/ORGANIZATION] (the "Rules"). The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The parties shall each bear their own attorney fees with respect to such Arbitration but shall share equally the other costs and expenses of arbitration.

14. GOVERNING LAW

In interpreting the terms of this Agreement, the parties agree that the laws of New Zealand shall be applicable. All suits permitted to be brought in any court shall be in New Zealand.

15. ENTIRE AGREEMENT

This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supercedes and replaces all prior discussions, agreements, proposals, understandings, whether orally or in writing, between the parties related to the subject matter of this Agreement. This Agreement may be changed, modified or amended only in a written agreement that is duly executed by authorized representatives of the parties. If any provisions hereof is deemed to be illegal or unenforceable by a court of competent jurisdiction, the enforceability of effectiveness of the remainder of the Agreement shall not be effected and this Agreement shall be enforceable without reference to the unenforceable provision. No party's waiver of any breach or accommodation to the other party shall be deemed to be a waiver of any subsequent breach.

16. TIME OF THE ESSENCE

Both Parties recognize that time is of the essence in this Agreement and that the failure to develop, test and deliver the deliverables hereunder in accordance with the Delivery Schedule shall result in expense and irreparable damage to the Customer.

17. FORCE MAJEURE

Nether Party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed, restricted or prevented by reason of any act of God, fire, natural disaster, act of government, strikes or labor disputes, inability to provide raw materials, power or supplies, or any other act or condition beyond the reasonable control of the party in question.

18. PARTIAL INVALIDITY

Should any provision of this Agreement be held to be void, invalid or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect and the invalid provision shall be deemed modified to the least degree necessary to remedy such invalidity.

19. NO WAIVER

The failure of either Party to partially or fully exercise any right or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of this Agreement.

20. HEADINGS

The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

21. COUNTERPARTS

This Agreement may be executed in counterparts, and each of which shall be deemed an original and all of which together shall constitute one and the same document

IN WITNESS WHEREOF, the parties hereto have duly entered and executed this Agreement as of the day and year first above written and represent and warrant that the party executing this Agreement on their behalf is duly authorized.

DEVELOPER

CUSTOMER

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

EXHIBIT "A"
WEBSITE SPECIFICATIONS

EXHIBIT "B"
CLIENT DELIVERY ITEMS

EXHIBIT "C"
WEBSITE CONTENT TO BE CREATED BY DEVELOPER

EXHIBIT "D"
WEBSITE "MOCK-UP"

EXHIBIT "E"
META TAG KEYWORDS

EXHIBIT "F"
SCHEDULE OF COMPLETION

EXHIBIT "G"
PAYMENT SCHEDULE