

# Agreement for Production of Website

## 1. Authorization

The client is engaging Dream Whisper, LLC as an independent contractor for the specific purpose of developing and/or redesigning a website to be installed on the Client's Hosting Account Server. Hereafter, the client will be known as the "Client" and Dream Whisper, LLC/Dream Whisper Designs will be known as the "Developer."

## 2. Design

The Developer will plan, design, and code a WordPress Template for the client to their specifications. The estimate covers only the actual template development. Additional work will result in additional charges. Additional work is defined as work on the client server such as installation of WordPress, the addition of pages, graphics, or other significant features, any graphic, page design, or actual page requiring more than two rounds of revisions, revisions to text content provided ready for publication, changes to elements which have been finalized, or significant changes in plan, scope, or direction of project, including redesign.

## 3. Domain Registration / Hosting

The Client is responsible for domain registration and maintenance of said domain registration. The client is also responsible for obtaining appropriate and suitable hosting. The Developer will set up the template on the Client's web hosting. However, the Developer makes no guarantees as to minimum "uptime" or security, nor shall the Developer be held responsible for any direct, indirect, special or consequential damages resulting from possible lapses in hosting services or hosting service security. Such possible damages include, but are not limited to, any lost profits or business interruption or loss of digital data. The Developer shall not provide hosting or email support under this contract, as this should be done through the Client's Hosting/Email Provider.

## 4. Estimate and Process

The process for the creation of visuals, such as graphics and page designs, consists of the Developer providing drafts and asking for feedback from Client; the feedback is then used to produce another draft. This estimate assumes that two rounds of this process (revisions) will suffice. Please note that a "revision" is not the same as a "redesign." Revisions are revised editions of an existing design based upon the initial template or site specifications.

By the nature of WordPress, the client is able to add and change content at will and thus, insertion of content is not included unless otherwise specified. If agreed upon as part of the final contract, text content will be provided by Client as final drafts ready for publication and in digital form. Graphic content will be provided by Client in an orderly manner and clearly labeled as to desired use on site.

## 5. Base Package

This agreement contemplates standard branding web pages with a background, layout, Client-provided graphics, and any necessary Developer owned or free license JavaScript included. If the addition of content is part of the initial estimate, all content must be delivered by the Client via electronic methods (via email or on CD). Any non-electronic content, such as hard copy documents or photos to scan will be done at a fee of \$80/hour over and above the quoted price of the website.

Unless otherwise specified in the estimate/site specification, any additional items needed, such as software installation, php programming, logo creation, additional databases, plugin customization etc., will result in additional charges unless specified at the beginning of the project.

## 6. Subcontractors

The Developer may use qualified subcontractors under our supervision for any or all work on this project.

## 7. E-commerce.

This contract contemplates the possibility of an e-commerce enabled site. E-commerce setup will incur additional charges beyond base template customization. A merchant account for the acceptance of credit cards is the sole

responsibility of the Client. The Client agrees that it is responsible for complying with the laws, taxes, and tariffs related to e-commerce, and will hold harmless, protect, and defend the Developer and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the client's use of Internet electronic commerce. Client also understands that the Developer cannot provide legal advice.

## **8. Payment Terms / Work Flow**

A minimum deposit of 60% of the highest estimate is required to schedule and/or commence work on any website. Please note that the

Developer has many projects ongoing simultaneously, therefore if all materials are not received within 15 days the Client's project may be assigned a completion date much farther in the future than anticipated, as ongoing projects and other new projects will be given higher priority. Upon completion of the website an invoice will be sent to the Client requesting final payment of the remaining balance plus any additional charges incurred, due within 10 business days and prior to release of files to the Client.

## **ESTIMATE, PAYMENT ARRANGEMENTS, & WORKFLOW**

1. Payment shall be made as follows:

A deposit of 60% is due before work is entered into the design schedule, and before work begins;  
A final payment of 40% (plus relevant additional charges) is due upon completion of site as specified, before site is published on the Internet and/or files released to the Client.

2. If the production process takes longer than 45 days, the remaining payment will be due.
3. Cancellation of the project at the request of the Client must be made in writing. In the event of the cancellation of this assignment, or any delay of more than 30 days, we will invoice you for the greater of either: (1) all work completed up to the date of notification, based upon the percentage of the project finished, including expenses; or (2) The initial deposit plus expenses, and this contract shall be considered fulfilled by the Developer. All incomplete work will remain the property of the Developer. All payments already made will first be applied to these charges. In the event this amount is not sufficient to cover the Developer for time (\$80 per hour) and expense already invested in the project, additional payment will be due. If additional payment is due, this will be billed to the Client within 10 days of notification to stop work. There are no refunds.

Work will not be scheduled until both contract and deposit are received, based on the later date of contract or deposit receipt. Delays in receipt of payment, contract, information or content from the Client may result in design delays, both in scheduling and completion of design. If such delays occur, the Client holds the Developer harmless against loss of income or any other damage related to any delay in website launch.

The Client agrees that the Developer may work on multiple projects simultaneously and that the Developer is not exclusively retained by the Client during website/template development.

## **9. Client Amends**

Developer prides itself in providing excellent customer service. That is the spirit of our agreement and the spirit of the Developer's business. To that end, we encourage input from the Client during the design process. The Developer understands, however, that Clients may request significant design changes to pages that have already built to the Client's specification. To that end, please note that our agreement does not include a provision for "significant page modification" or creation of additional pages in excess of our agreed amount, for free. If significant page modification is requested after a page has been built to the Client's specification, we must count it as an additional page, which will incur a charge of \$80 per hour.

Some examples of significant page modification at the request of the Client include, but are not limited to:

1. Developing a new table or layer structure to accommodate a substantial redesign at the Client's request.
2. Recreating or significantly modifying the company logo graphic at the Client's request.
3. Replacing more than 50% of the text to any given page at the Client's request.
4. Creating a new navigation structure or changing the link graphics at the Client's request.
5. Significantly reconfiguring the Client's shopping cart with new product, shipping or discount calculation if an e-commerce enabled site has been selected by the Client.

## **11. Site Maintenance**

All site maintenance requests must be received in writing via email from a designated representative of the Client, on the Client's letterhead or from the Client's email address. The Developer charges \$80/hour, in ½ hour increments, for all maintenance tasks over 5 minutes. Any in-person meetings between the Developer and Client to discuss website changes will be billed at the Developer's rate of \$80/hour. Prior to any non-gratis maintenance requests being performed the Developer will present the Client with an emailed estimate of the cost of the change and the expected completion date.

## **12. Third Party or Client Page Modification**

Some Clients will desire to independently edit or update their web pages after completion of the site. Note however, that if this option is selected and the Client, or an agent of the Client other than the Developer attempts to update the web site and damages the design or impairs the ability for the web pages to display or function properly, time to repair the web pages will be assessed at a rate of \$80/hr, with a 1 hour minimum.

## **13. Search Engine Registration**

The Client is responsible for all search engine related optimization and submission.

## **14. Copyrights and Trademarks**

The Client represents to the Developer and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to the Developer for inclusion in the Client's web site are owned by the Client, or that the Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend the Developer and its subcontractors from any claim or suit arising from the use of such elements furnished by the Client. It is the Client's responsibility to obtain and maintain on file model releases for any individual depicted in any photo, illustration, video or other media. The Client further agrees that all content, images, illustrations, or other content comply with all Federal and State Law.

## **15. Limited Liability**

The Developer reserves the right to determine what is and is not offensive. The developer shall not be liable for indirect, incidental, consequential, special or exemplary damages, even if it has been advised of the possibility of such damages. The Client agrees that any material submitted for publication will not contain anything leading to an abusive or unethical use of the Web Hosting Service, the Host Server or the Developer. Abusive and unethical materials and uses include, but are not limited to, obscenity, violations of privacy, computer viruses, harassment, any illegal activity, spamming, advocacy of an illegal activity, and any infringement of privacy. Client hereby agrees to indemnify and hold harmless the Developer from any claim resulting from the Client's publication of material or use of those materials. It is also understood that the Developer will not publish information over the Internet which may be used by another party to harm another.

## **16. Indemnification**

Client agrees that it shall defend, indemnify, save and hold the Developer harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees associated with the Developer's development of the Client's web site. This includes Liabilities asserted against the Developer, its' subcontractors, agents, clients, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by the Client, its agents, employee or assigns. Client also agrees to defend, indemnify and hold harmless the Developer against Liabilities arising out of any injury to person or property caused by any products or services sold or otherwise distributed over the Client's web site. This includes infringing on the proprietary rights of a third party, copyright infringement, and delivering any defective product or misinformation which is detrimental to another person, organization, or business. The Developer will not be liable to Client or to any third party for any damages arising from the use of web site.

### **17. Copyright / Ownership to Web Pages and Graphics**

Copyright to the Client provided content and overall flattened design, as a whole, shall be vested with the Client while copyright to any source code, css, search engine optimization, customized programming and design elements rests with the Developer. All custom, site-specific flattened graphics, domain names, and Client developed intellectual property shall be owned by the Client. The Developer retains rights to use source code, css, software, and design layers and elements currently owned or gained in the creation of the site. All revenues generated directly or indirectly from Client generated website content are the property of the Client. Developer copyrighted and/or licensed components may not be used on more than one domain without the Developer's permission. In the event that the Developer uses any licensed code or licensed design element to fulfill a design requirement, the Client agrees to separately purchase a usage license from the author of said code or design element. Work performed under this contract is NOT work for hire.

### **18. Design Credit**

The Client agrees that the web site/theme created for the Client may be included in the Developer's portfolio and that a credit link will be placed in the footer of the website. As part of these terms of service, this credit link must remain intact for the duration of design usage.

### **19. Client Contact**

We encourage client contact and feedback. However, phone contact is limited to 30 minutes per week unless the designer/developer finds it necessary for additional communication. Please limit emails to no more than 1 concise, well thought-out email per day unless the developer has specifically asked a question. We understand that communication is vital. However, our time is best spent designing and developing your website rather than answering emails. (We have established this limit based on past experiences, including receiving over 60 emails during one day from a single client.)

### **20. Nondisclosure**

The Developer, its employees and subcontractors, agree that, except as directed by the Client, it will not at any time during or after the term of this Agreement disclose any Confidential Information to any person whatsoever. Likewise, the Client agrees that it will not convey any Confidential Information obtained about the Developer to another party.

Both parties warrant that they have read and understand the terms set forth in this agreement. The Developer and Client agree that any dispute arising out of this Agreement shall first be resolved by mediation, if possible. This contract was entered into in Pike County, Pennsylvania, and any necessary arbitration or litigation will take place in this county.

**This Agreement is considered applicable once a deposit has been made for template/site development and regardless whether the client chose to read it or not.**