

Smart Plan

Protect your business with a website design agreement.

BY MIKE YOUNG

Whether you have an existing website that needs to be modernized or you want a new one, a written website design agreement will help protect you and your business from costly mistakes. It will also reduce the chances of legal conflict arising between you and your designer.

Here are some of the key issues you'll want to have addressed in your contract, which can also be referred to as a website development agreement.

- 1. Scope of Work.** Also known as a “statement of work,” this section of your contract should detail what your designer is expected to do. Your designer may want the agreement to also specifically exclude certain design and development tasks that *do not* fall within the scope of work.
- 2. Change Orders.** If you decide that work needs to be done beyond what has been identified in the scope of work, the contract should provide for the use of change orders to modify the scope. This may also include changes in deadlines and pricing to reflect the additional work.
- 3. Work Timetable.** If not addressed within the scope of work, your contract should elsewhere identify the timetable for deliverables, including milestones that trigger certain events (e.g., partial payment to the designer), as well as a beta testing phase so you can ensure that the site works as intended.
- 4. Payment.** How and when you pay your website designer should be included in the agreement. As the business owner, you'll want to pay as little as possible upfront so that your website designer is encouraged to perform all of the services within the scope of work. On the other

hand, the designer might prefer to be paid upfront to avoid getting stiffed after the services have already been rendered. Payment provisions are negotiable, and you should be able to come to an arrangement that satisfies both parties.

- 5. Independent Contractor Status.** Your agreement should make it clear that your designer is working as an independent contractor—and not as an employee of your business. You do not want to end up in a legal mess where your designer has filed for unemployment or workers' compensation based on alleged employment status.
- 6. Intellectual Property Ownership.** Many business owners believe that website design done on a work-for-hire basis automatically means that the business owns the intellectual property created by the designer. But this may not be the case. You should clarify IP ownership in the agreement. Many designers create their own swipe files that they use to design and develop sites for multiple clients. If you want exclusive ownership, you may have to pay a premium. You may also have to pay to license certain content (e.g., stock photography and software apps).
- 7. Warranties and Disclaimers.** Your agreement should have a section that specifically covers the warranties your designer is giving, the warranties that are excluded, and possible limitations on liability.
- 8. Confidentiality and Noncompetition.** The contract should make sure that any confidential information shared with your designer stays confidential. It should also prohibit your designer from competing against you

and perhaps working for your competitors for a certain period of time.

- 9. Assignments and Subcontracting.** Some businesses should consider restricting or prohibiting assignments and subcontracting by your website designer, who might balk at this, particularly if he or she is paying freelancers (sometimes overseas) to perform some of the work. If you decide to permit such arrangements, make sure the contract states that those freelancers are bound by the same protections you are provided in the agreement (e.g., confidentiality and noncompetition) and also that you're not liable for paying subcontractors who are not paid by the designer.

- 10. Applicable Law and Dispute Resolution.** Your agreement should state which laws govern the agreement (e.g., the laws of the state of Texas and applicable federal law). It should also address how disputes will be handled. There can be different paths to resolution depending on the severity and type of breach. For example, if there is a disagreement regarding whether your designer has substantively completed the scope of work on a timely basis, you may want that handled by commercial arbitration. On the other hand, if the designer clones the website you paid for and sells it to your competitor, you may want to be able to march into a court and seek injunctive relief.

Of course, the terms of your website design agreement will vary depending upon your specific needs. If you need a new agreement to protect your interests or would like to have the designer's website agreement professionally reviewed and revised before you sign, your first step should be a consultation with a qualified lawyer. **TBJ**



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