

Website Development Agreement

This Agreement is made between _____ (the "Client") with a principal place of business at _____ and **Trnka Web Design and Digital Services LLC** (the "Developer") with a principal place of business at _____.

1. Definitions

"The Site" means a series of linked Web pages under common control and developed by Developer for Client under this Agreement.

"Client Content" means all data, code, trademarks and copyrighted content provided by Client for use by Developer on the Site.

"Developer Content" means all data, code, trade secrets, patents, designs, drawings, text created by Developer for use on the Site, including any modifications or enhancements provided by Developer.

2. Developer Services

Developer will perform the development services described in Attachment 1. There are **five** stages of development services: **Discover, Define, Design, Develop and Deliver**. Developer will complete the **five** stages on or before the dates listed in Attachment 1. Before delivering the Site to Client, Developer will test its components to make sure the Site and its components work as intended.

3. Evaluation and Acceptance

As Developer completes each stage, Developer will submit the completed materials to Client for approval. Client will have ___ days to approve the completed materials or provide corrections and comments.

Developer will have ___ days after receiving Client's comments and corrections to submit a revised version of the materials to Client. Client will review the revised version within ___ days of receipt and either approve the corrected version or make further changes.

If Client determines, in its reasonable discretion, that the materials are not acceptable after two attempts at correction by Developer, Client can terminate this Agreement. If Client fails to provide approval or comments during any of the approval periods, those materials will be considered to be approved.

If Client terminates this Agreement under this provision, Developer shall be entitled to compensation on a time and materials basis at an hourly rate of \$_____ plus expenses to the date of termination. Developer shall submit an invoice detailing its time and expenses. If the invoice amount is less than the amounts paid to Developer prior to termination, Developer shall promptly return the excess to Client. If the invoice amount exceeds the amounts paid to Developer prior to termination, Client shall pay Developer the difference within 30 days of the date of the invoice.

4. Compensation

[Choose one]

[] Client shall pay, upon completion of each of the following Milestones, the following amounts to

Developer:

Fee	Due Date
\$ _____	Within ____ days of the effective date
\$ _____	Upon approval of the Design Stage
\$ _____	Upon approval of the Preliminary Development Stage
\$ _____	Upon approval of the Final Delivery Stage

[] Developer shall be compensated at the rate of \$_____ per [Choose one] hour/day/week/month. Payment will be made within _____ days of the date of Developer's invoice for work completed.

[OPTIONAL: Unless otherwise agreed upon in writing by Client, Client's maximum liability for all services performed during the term of this Agreement shall not exceed \$_____.]

5. Payment of Developer's Costs

Developer shall be responsible for all expenses incurred while performing services under this Agreement.

6. Late Fees

Late payments by Client shall be subject to late penalty fees of ____% per month or the maximum allowed under state law from the due date until the amount is paid.

7. Materials

Client shall make available to Developer, at Client's expense, the following materials, facilities and equipment: _____. These items will be provided to Client by _____.

8. Changes in Project Scope

If Client wishes to implement major revisions after Client has already accepted Developer's work product following completion of any stage of development, Client shall submit to Developer a written proposal specifying the desired changes.

Developer will evaluate each such proposal at its standard rates and charges. Developer shall submit to Client a written response to each such proposal within 10 working days following receipt thereof. Developer's written response shall include a statement of the availability of Developer's personnel and resources, as well as any impact the proposed changes will have on the contract price, delivery dates or warranty provisions of this Agreement.

Client shall have 10 business days from receipt of Developer's response to its proposal to accept or reject it in writing. If Client accepts Developer's response, Developer shall draft a written Contract Amendment Agreement to reflect the desired changes and acknowledge any effect of such changes on the provisions of this Agreement. The Contract Amendment Agreement shall be signed by Client and Developer, whereupon Developer shall commence performance in accordance with it.

Should Client reject Developer's response to its proposal, Client will so notify Developer within 10 working days of Client's receipt of the response. Developer will not be obligated to perform any services beyond those called for in this original Agreement

9. Delays

Developer shall use all reasonable efforts to meet the delivery schedule set forth in Attachment 1. However, at its option, Developer can extend the due date for any deliverable by giving written notice to Client. The total of all such extensions shall not exceed _____ days.

Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, provided that the delayed party has taken reasonable measures to notify the other of the delay in writing. The delayed party's time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control.

Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government after the date of the Agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war or terrorism and epidemics. Failure of subcontractors and inability to obtain materials shall not be considered a condition beyond a party's reasonable control.

10. Ownership of Developer Content

Developer shall retain all copyright, patent, trade secret and other intellectual property rights Developer may have in Developer Content. Subject to payment of all compensation due under this Agreement, Developer grants Client a nonexclusive, nontransferable, royalty-free license to use Developer Content. This license shall authorize Client to:

- Operate the Site on its host server
- update, revise or republish the Site, and
- advertise and promote the Site.

11. Website Credits and Links

Developer can:

state on the Site that Developer developed the Site

place hypertext links on Client's Site to Developer's website

place hypertext links on Developer's website to Client's Site as an example of Developer's services.

12. Site Hosting

Client has selected an Internet service provider to host its completed Site. While the Site is under construction and until final payment is received by Developer, Developer will host the Site pages as they are constructed in a special directory on its web space at _____. If the Site is not completed by the completion date set forth in Attachment 1, and if the cause of the delay is not attributable to Developer,

Client agrees to pay Developer \$____ per month for hosting the Site on Developer's web space. Client will continue to pay Developer for hosting the Site at this rate until the Site is installed on Client's own web space. This monthly rate shall be prorated if the Site is installed on Client's web space before the end of any monthly period.

13. Domain Name

Developer has no legal or financial interest in the domain name chosen by Client for the site.

14. Developer Representations and Warranties

Developer represents and warrants to Client that:

- Developer Content will substantially conform to all specifications set forth in this Agreement and its attachments upon delivery and for a period of _____ after delivery.
- Developer has obtained or will obtain all necessary and appropriate rights and licenses to use Developer Content for the Site. Upon request, Developer will provide Client with copies of clearances for any intellectual rights obtained from third parties in connection with the website.
- Developer will not engage in any defamatory, deceptive, misleading or unethical practices that are or might be detrimental to Client or the Site.

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES GRANTED BY DEVELOPER. DEVELOPER DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. Intellectual Property Infringement Claims

Developer represents, BUT DOES NOT WARRANT, that to the best of its knowledge the Developer Content delivered to Client under this Agreement will not infringe any valid and existing intellectual property right of any third party.

16. Limitation of Developer's Liability to Client

- (a) In no event shall Developer be liable to Client for lost profits of Client, or special or consequential damages, even if Developer has been advised of the possibility of such damages.
- (b) Developer's total liability under this Agreement for damages, costs and expenses, regardless of cause, shall not exceed the total amount of fees paid to Developer by Client under this Agreement.
- (c) Developer shall not be liable for any claim or demand made against Client by any third party except to the extent such claim or demand relates to copyright, trade secret or other proprietary rights, and then only as provided in the section of this Agreement entitled Intellectual Property Infringement Claims.
- (d) Client shall indemnify Developer against all claims, liabilities and costs, including reasonable attorney fees, of defending any third party claim or suit arising out of the use of the Developer Content

provided under this Agreement, other than for infringement of intellectual property rights. Developer shall promptly notify Client in writing of any third party claim or suit and Client shall have the right to fully control the defense and any settlement of such claim or suit.

17. Client Representations and Warranties

Client represents and warrants to Developer as follows:

- Client has the authority to enter into and perform its obligations under this Agreement
- Client has or will obtain all necessary and appropriate rights and licenses to grant the license to Developer to use Client Content for the Site, and
- Client has or will obtain any authorizations necessary for hypertext links from the Site to any other third party websites.

Client will indemnify Developer from any third-party claims resulting in losses, damages, liabilities, costs, charges, and expenses, including reasonable attorney fees, arising out of any breach of any of Client's representations and warranties contained in this Agreement. For such indemnification to be effective, however, Developer must give Client prompt written notice of any such claim and provide Client such reasonable cooperation and assistance as Client may request in the defense of such suit. Client will have sole control over any such suit or proceeding.

18. Confidentiality

Confidentiality: During the term of this Agreement and for [6 months to 5 years] afterward, Developer will use reasonable care to prevent the unauthorized use or dissemination of Client's confidential information. Reasonable care means at least the same degree of care Developer uses to protect its own confidential information from unauthorized disclosure.

Confidential information is limited to information clearly marked as confidential, or disclosed orally that is treated as confidential when disclosed and summarized and identified as confidential in a writing delivered to Developer within 15 days of disclosure.

Confidential information does not include information that:

- the Developer knew before Client disclosed it
- is or becomes public knowledge through no fault of Developer
- Developer obtains from sources other than Client who owe no duty of confidentiality to Client, or
- Developer develops independently.

19. Term of Agreement

This Agreement commences on the date it is executed and shall continue until full performance by both parties, or until earlier terminated by one party under the terms of this Agreement.

20. Termination of Agreement

Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of 30 days after written notice of such breach is sent to the other party.

If Developer terminates this Agreement because of Client's default, all of the following shall apply:

- (a) Client shall immediately cease use of the Developer Content.
- (b) Client shall, within 10 days of such termination, deliver to Developer all copies and portions of the Developer Content and related materials and documentation in its possession furnished by Developer under this Agreement.
- (c) All amounts payable or accrued to Developer under this Agreement shall become immediately due and payable.
- (d) All rights and licenses granted to Client under this Agreement shall immediately terminate.

[Optional: This Agreement may be terminated by Client for its convenience upon thirty 30 days' prior written notice to Developer. Upon such termination, all amounts owed to Developer under this Agreement for accepted work shall immediately become due and payable and all rights and licenses granted by Developer to Client under this Agreement shall immediately terminate.]

21. Taxes

If Developer is required to pay any federal, state or local sales, use, property or value added taxes based on the services provided under this Agreement, the taxes shall be Developer's sole responsibility.

22. Developer an Independent Contractor

Developer is an independent contractor, and neither Developer nor Developer's staff is, or shall be deemed, Client's employees. In its capacity as an independent contractor, Developer agrees and represents, and Client agrees, as follows:

- (a) Developer has the right to perform services for others during the term of this Agreement subject to non-competition provisions set out in this Agreement, if any.
- (b) Developer has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- (c) Developer has the right to perform the services required by this Agreement at any place or location and at such times as Developer may determine.
- (d) Developer will furnish all equipment and materials used to provide the services required by this Agreement.
- (e) The services required by this Agreement shall be performed by Developer, or Developer's staff, and Client shall not be required to hire, supervise or pay any assistants to help Developer.
- (f) Developer is responsible for paying all ordinary and necessary expenses of its staff.
- (g) Neither Developer nor Developer's staff shall receive any training from Client in the

professional skills necessary to perform the services required by this Agreement.

(h) Neither Developer nor Developer's staff shall be required to devote full-time to the performance of the services required by this Agreement.

(i) Client shall not provide insurance coverage of any kind for Developer or Developer's staff.

(j) Client shall not withhold from Developer's compensation any amount that would normally be withheld from an employee's pay.

23. Website Maintenance and New Development

Developer will maintain the Site or provide additional development after its launch according to the terms stated in Attachment 2.

24. Disputes

If a dispute arises, the parties will try in good faith to settle it through mediation conducted by a mediator to be mutually selected.

The parties will share the costs of the mediator equally. Each party will cooperate fully and fairly with the mediator and will attempt to reach a mutually satisfactory compromise to the dispute.

If the dispute is not resolved within 30 days after it is referred to the mediator, it will be arbitrated by an arbitrator to be mutually selected. Judgment on the arbitration award may be entered in any court that has jurisdiction over the matter. The arbitrator will allocate costs of arbitration, including attorney fees.

25. Attorney Fees and Expenses

If there is litigation, the prevailing party may collect from the other party its reasonable costs and attorney fees incurred in enforcing this Agreement.

26. Survival

The provisions of Sections 15 through 17 will survive any termination of this Agreement.

27. General Provisions

(a) Complete Agreement: This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence.

(b) Modifications to Agreement: Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

(c) Applicable law: This Agreement will be governed by the laws of the State of Minnesota.

(d) Notices: All notices and other communications given in connection with this Agreement shall be

in writing and shall be deemed given as follows:

- When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement;
- Three days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement, or
- When sent by fax or electronic mail. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.

(e) No Agency: Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

(f) Assignment: The rights and obligations under this Agreement are freely assignable by either party. Client shall retain the obligation to pay if the assignee fails to pay as required by this Agreement.

(g) Successors and Assigns: This agreement binds and benefits the heirs, successors and assigns of the parties.

(h) Severability: If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement will be interpreted so as best to carry out the parties' intent.

28. Signatures

Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

Client
Name of Business: _____
a _____

(Signature)

(Typed or Printed Name)
Title: _____
Date: _____
Address: _____

Developer
Trnka Web Design and Digital Services
a Limited Liability Company

(Signature)
Frank R. Trnka
(Typed or Printed Name)
Title: Owner
Date: _____
Address: _____

Attachment 1

Development Stages and Due Dates

Development Services shall consist of four stages:

Stage	Services	Due Date
Discover	The parties will discuss and agree upon the basic concept and budget for the Client website.	
Define	Developer shall prepare a written summary of the basic elements of the website's functionality and appearance and the project schedule.	Within __ days of the effective date.
Design	The parties will discuss and agree upon the design of the Client website and Developer shall prepare a detailed summary of the proposed appearance, operation and functionality including a list of all necessary software and materials necessary to launch the Site.	Within __ days of the approval of the Define Stage.
Preliminary Development	During Preliminary Development, Developer shall prepare the following web pages for the Site _____ and demonstrate the following functionality for the Site: _____	Within __ days of the approval of the Design Stage.
Final Delivery	Developer will complete all requirements for the Site and host it in a manner that Client can view it for a period of at least __ days.	Within __ days of the approval of the Preliminary Development Stage.

Attachment 2

Maintenance and New Development

Following launch of the Site, Developer will provide the following services at the following rates:

Service	Rate
Technical support necessary to maintain reliable performance of the features and functionality of the Site	_____ per month
Consulting and new development services	_____ per hour

Client will pay Developer within 30 days of receiving Developer's invoice. Client grants to Developer a license to reproduce and modify the Site content to provide these services.

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