

Terms of Service

This document (the "Agreement") sets forth the principles, guidelines and requirements of the Terms of Service of Tamsen Cornell and Laura Eldridge doing business as wcpdesign.com (the "Developer") governing the use by the customer ("Client") of Developer's services and products ("Services and Products"). The Developer retains the right to modify these Terms of Service at any time and from time to time, and any such modification shall be automatically effective as to all customers when adopted by Developer and published at www.wcpdesign.com. Developer shall be the sole and final arbiter as to the interpretation of the following. By utilizing the Developer's Services and Products, the Customer agrees to be bound by the terms herein outlined.

1. DEFINITIONS

1.1 "Content" means all text, pictures, sound, graphics, video and other data supplied by Client for the Website Source Material (see 1.2).

1.2 "Website Source Material " means all HTML files, Java files, graphics files, animation files, data files, technology, scripts and programs, both in object code and source code form, all documentation and any other deliverable prepared for Client by the Developer in accordance with the terms of this Agreement.

1.3 "Website " means the Content made available on pages under the Domain Name.

1.4 "Proprietary Information" shall have the meaning set forth in Section 8.

1.5."Intellectual Property Rights" means all know-how, trade secrets, trademarks, copyrights, and patentable inventions, including materials notes, designs, technical data, ideas, know-how, research, reports, documentation and other information related thereto.

2. WEBSITE DEVELOPMENT

2.1 Delivery of Initial Content. Client shall deliver to the Developer all Content that Client intends for the Developer to incorporate into the "Website Source Material," unless otherwise noted in the Website Proposal, as Content Writing, which is available as a separate service, and priced accordingly. The submitted Content shall be in the format(s) specified in the Exhibit A.

2.2 Project and Duration Developer shall work on a time-definite basis and will work diligently to keep the project moving forward. Work not specified in the Website Contract is considered additional work and must be authorized by an Addendum to Website Contract. Developer and Client agree to provide content and feedback on a timely basis.

2.3 Project Liaison Each party's primary contact for development efforts shall be the project liaison specified in the Website Proposal or the person otherwise designated in writing by Client or the Developer.

3. MODIFICATIONS If either party desires to modify the Website Contract at any time during the term of this Agreement, such party shall describe the additional services or deliverables to the other party. Within **15** days of such notice, the Developer shall submit an "Addendum to Website Contract" which includes a statement of any additional charges. Upon Client's written approval of the Addendum to Website Contract, it will become under the purview of the Terms of Service. The Developer shall quote all charges for the Addendum to Website Contract at its then-current standard charges.

4. WEB HOSTING AND DOMAIN NAMES

4.1 Domain Name If requested by Client, the Developer shall cooperate with Client in registering the Domain Name(s) with Register.com. Client shall be responsible for all registration expenses and shall own all right, title and interest in and to the Domain Name(s) and all Intellectual Property Rights related thereto. Developer will ask permission of the Client to be listed as the technical contact, so as to have authorization to speak to Register.com on Client's behalf, limited to technical matters only.

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4.2 Website Hosting If requested by Client, the Developer shall cooperate with Client in signing up for hosting with Register.com. Client shall be responsible for all registration expenses and shall own all right, title and interest in and to the Domain Name and all Intellectual Property Rights related thereto. Developer will ask permission of the Client to be listed as the technical contact, so as to have authorization to speak to Register.com on Client's behalf, limited to technical matters only.

5. PAYMENTS

5.1 Fees A payment schedule will be included in the Website Contract drawn after acceptance of the Website Proposal.

5.2 EXPENSES Client shall reimburse the Developer for all reasonable out-of-pocket expenses which have been approved in advance by Client, such as stock photography, photography services, content writing or other material and supply costs. Client will receive appropriate receipts or other evidence of said expenses.

6. OWNERSHIP

6.1 Website Source Material All right, title and interest to Content and Intellectual Property in the Website Source Material created by the Developer under this Agreement shall be owned by Client, but such rights shall be subject to the provisions of this Agreement (including without limitation Section 6.2) and any rights of the Developer in Pre-existing Developer's Materials incorporated into the Website Source Material.

6.2 Pre-existing Developer's Materials. Notwithstanding anything in this Agreement to the contrary, the Developer shall retain ownership of all right, title and interest in and to the Developer's Tools, Content and all Intellectual Property developed, purchased or licensed by the Developer or on the Developer's behalf prior to this Agreement and to all Intellectual Property developed, purchased or licensed by or on the Developer's behalf during the term of this Agreement without the active participation of Client ("Pre-existing Developer's Materials"). The Developer hereby grants to Client the perpetual, irrevocable, nonexclusive, worldwide, royalty-free right and license to use the Pre-existing Developer's Materials solely in connection with the Website Source Material.

6.3 The Developer's Use of Website Source Material The Developer shall have the irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute internally or externally, and prepare derivative works based upon the Website Source Material. It shall be a condition of this paragraph that all Client Proprietary Information and any reference to Client have been removed from the Website Source Material before such use, unless granted verbal or written permission by Client, for Developer's marketing materials, such as, but not limited to Developer's website portfolio and brochure.

7. WARRANTIES AND COVENANTS

7.1 The Developer's Warranties

(a) Developer is responsible for posting the final Website Source Material to your internet service provider (ISP) to the domain name paid for and provided by Client. Developer makes no warranties about the availability of the Website to the public due to issues with your ISP. Client is responsible for keeping their account for their domain name and ISP in satisfactory monetary standing.

(b)The Developer warrants that for a period of three (3) months after delivery and installation of the Website Source Material (and used in accordance by the Client, with any documentation the Developer may provide to Client), that the Website will substantially conform to the description, as set forth in the Website Contract. Client's exclusive remedy and the Developer's sole liability under this warranty shall be for the Developer (at the Developer's own expense) to attempt through reasonable efforts to correct any material failure of the Website Source Material to perform as warranted, if such failure is reported to the Developer within the Warranty Period.

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(c) The Developer warrants that it has no knowledge that any part of the Developer's Tools infringe or otherwise make use of any copyright, trademark, trade secret or other proprietary right of any other party. In the event that a court of competent jurisdiction rules by a ruling that cannot be appealed that the Developer has, in fact, infringed upon the copyright of a third party, the Developer shall either (i) obtain a license from that third party or modify the Developer's Tools so that they are not infringing but still functions as represented in this Agreement, or (ii) if such alternative is not commercially reasonable, the Developer may terminate this Agreement and return to Client the Design Fees paid by Client hereunder, prorated over a one(1) year period. The remedies set forth in this Section 7 shall be Client's exclusive remedies in the event of any breach by the Developer of the representations set forth in this Section 7.1(b).

(d) The Developer does not guarantee that access to the Website will be uninterrupted or error-free. Matters related to Client's Hosting Company must be dealt with through the Hosting Company. If Developer is listed as a technical contact with Client Hosting Company, Developer may choose to act on behalf of Client in matters pertaining to technical issues. Developer will not act on behalf of Client in matters pertaining to financial payments, or lack thereof, which affect the Website. Client must maintain current ownership of its domain name and hosting services by paying for it on a timely basis, to keep the Website on the internet.

7.2 Warranty Disclaimer; Limitation of Liability

The above are the only warranties of any kind, either express or implied, that are made by the Developer and the Developer disclaims all other warranties, including but not limited to the implied warranties of merchantability, title, non-infringement and fitness for a particular purpose. No oral or written information or advice given by the Developer, its agents or employees shall create a warranty or in any way increase the scope of the warranties in this agreement. Such warranties shall not be deemed to have failed of their essential purpose so long as the Developer is making good faith efforts to remedy any breach under the terms of the warranty. Neither the Developer nor anyone else who has been involved in the creation, production or delivery of the Website Source Material shall be liable for any direct, indirect, consequential, or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of this agreement or the use of or inability to use the Website Source Material, even if the Developer has been advised of the possibility of such damages. In no case shall the Developer's aggregate liability for all matters arising out of the subject matter of this agreement, whether in Contract, tort or otherwise, exceed the design fee actually received by the Developer from Client pursuant to this agreement.

7.3 Client Covenants Client shall not distribute on the Website any Content that: (a) infringes on the Intellectual Property Rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, or antidiscrimination), (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (d) is obscene, pornographic or indecent; or (e) contains any viruses, Trojan horses, worms, cancelbots or other computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any system, data or personal information.

7.4 Client Warranties Client warrants and unconditionally guarantees that all information such as text, graphics, photos, icons, visual designs, trademarks and the like that are furnished by Client are owned by Client or have the legal right to use these items. Client will hold harmless and legally defend Developer from any claims or suits that originate from the use of such items.

8. CONFIDENTIALITY

"Proprietary Information" is confidential and valuable information which a party desires to protect against disclosure or competitive use or which is in written form and designated as proprietary or confidential or is disclosed orally and is designated either orally or in writing as being proprietary or confidential. The Developer and Client shall each safeguard the other's Proprietary Information in the same manner as they safeguard their own valuable proprietary information. Each of the parties acknowledges that the other's Proprietary Information constitutes such party's valuable proprietary information and trade secrets, and that unauthorized disclosure or use of this information would cause irreparable damage to the proprietor of such information. Each of the parties expressly agrees and acknowledges that it is entering into this Agreement, and providing the other copies of its Proprietary Information hereunder, in reliance upon the other's foregoing promise of confidentiality. Any provisions herein concerning non-disclosure and non-use of Proprietary Information of a

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party shall not apply to any such information which (i) is already known to the other party when received from the disclosing party, (ii) is or becomes publicly known through publication or otherwise and through no wrongful act of the other party, (iii) is received from a third party without similar restriction and without breach of this Agreement, (iv) is approved for release or use by written authorization of the other party; provided, however, that prior to any disclosure or use by a party in reliance upon the above-referenced exemptions, the disclosing party will give the other party ten (10) days' notice specifying the information to be disclosed and the exemption being relied upon.

9. INDEMNIFICATION

9.1 Client. Client shall indemnify, defend and hold harmless the Developer from and against (a) all liability to others and all claims, causes of action and suits of others, including without limitation employees, subcontractors or agents of the Developer, arising out of the Content or out of or from the use by Client of the Website, or the exercise by Client of any rights granted to it under this Agreement, and (b) reasonable cost and expense (including, without limitation, reasonable attorneys' fees) arising from or relating to the foregoing. Client shall be notified promptly of any such claims in writing and, if requested to defend said action, given full and complete authority, information and assistance for the defense of same, provided, however, Client shall have no authority to enter into any settlement on behalf of the Developer without the prior written consent of the Developer. In all events, the Developer shall have the right to participate in the defense of any proceedings with counsel of its own choosing.

9.2 The Developer The Developer shall indemnify and hold harmless Client from and against (a) all liability to Client and all claims, causes of action and suits arising out of or from the direct infringement by the Developer of a third party's copyright, patent or trade secrets, and (b) reasonable cost and expense (including reasonable attorneys' fees) arising from or relating to the foregoing. Client shall notify the Developer promptly of any such claims in writing, and if requested to defend said action, give full and complete authority, information and assistance for the defense of same; provided, however, that the Developer shall have no authority to enter into any settlement on behalf of Client without the prior written consent of Client. In all events, Client shall have the right to participate in the defense of any proceedings with counsel of its own choosing.

TERM AND TERMINATION

10.1 Termination During Website Development. In the event that Client terminates the Agreement prior to Final Delivery of the Website, the Developer shall return any Initial Content and refund to Client any portion of the Design Fee previously paid to the Developer hereunder, excluding the Developer's reasonable expenses to date, which include hours spent on development and any costs incurred from the purchase of stock photography, shopping cart software or subcontractor fees. All licenses granted hereunder shall terminate.

10.4 Survival Sections 1, 4, 5, 6, 7, 8, 9 and 10 shall survive any termination or expiration of this Agreement.

11. GENERAL PROVISIONS

11.1 Governing Law This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts. The parties hereto consent to the jurisdiction of the courts of the Commonwealth of Massachusetts and the United States District Court of Massachusetts, as well as to the jurisdiction of all courts from which an appeal may be taken from which courts, for the purposes of any suit, action or other proceeding relating to this Agreement or with respect to any transaction contemplated hereby, and expressly waive any and all objections the parties hereto may have as to the venue of such courts to settle or adjudicate any claim or controversy arising hereunder, with respect to any transaction contemplated hereby. The parties hereto further agree, to the fullest extent permitted by law, that a summons or complaint commencing an action or proceeding in any of such courts shall be served properly and shall confer personal jurisdiction if served personally or by registered or certified mail to such party at the address provided for it in this Agreement or as otherwise provided under the laws of the Commonwealth of Massachusetts.

11.2 Scope of Relationship No agency, partnership, joint venture or employment is created between the parties as a result of this Agreement. Neither party is authorized to create any obligation, express or implied on behalf of the other party, nor to exercise any control over the other party's methods of operation.

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11.3 Severability; Waiver If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

11.4 Headings Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

11.5 Assignment Neither party may assign this Agreement or the rights and duties hereunder without the prior written consent of the other party.

11.6 Notice Any notices required or permitted hereunder shall be given to the appropriate party at the address specified in the Website Contract or at such other address as the party shall specify in writing. Such notice shall be deemed given: upon personal delivery; if sent by facsimile, upon confirmation of receipt; if sent by recognized overnight carrier, upon confirmation of receipt; or if sent by certified or registered mail, postage prepaid, five (5) days after the date of mailing.

11.7 Entire Agreement This Agreement, including any Exhibits attached hereto, sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be amended only by writing or a Contract signed by both parties. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

EXHIBIT A

CONTENT All Content shall be provided to the Developer by Client in the formats specified below:

1. All text shall be provided in [MS Word, PDF, MS Publisher, or HTML, Notepad or WordPad].
2. All graphics shall be provided in [JPEG, TIFF, and/or GIF format].

WEBSITE

The Website shall not include any of the Developer's Tools.

PLATFORM REQUIREMENTS

The Website Source Material and the Developer's Tools provided to Client by the Developer shall be compatible with the following browser(s): MS Internet Explorer 4+.

Developer will endeavor to make the Website compatible with other browsers, but does not guarantee the same end-user experience with a MAC platform or Firefox/Mozilla browser.

Website Specifications

1. The graphics used in Client's Website shall be in GIF or JPEG.
2. Each page shall include the following initial "head" statements
<meta name="description" content=" ">
<meta name="keywords" content=" ">
3. The Developer shall develop the Website to project the highest professional image. The Developer shall not include any links to other sites without Client's prior written consent.