

Before you sign your
*Web
Developer's*
contract . . .

VDG

Your friend who is a lawyer

Negotiating Your Developer's Contract

What is this? The following pages have a list of topics that your web developer's contract should include, like "Start Date" and "Deadline for Delivery." Underneath those topics is a note from me on what to look out for and a suggested term to include in the contract if the contract does not already have it. I use brackets ([]) to identify area where you need to customize.

How to use this: Look through your developer's contract and see if it covers each of the topics on this list. If not, you can do one of three things:

1. Ask your developer to include it (this can be slow because he or she may not be interested in strengthening the contract in your favor);
2. Add the suggested term yourself using "track changes" in Word (under the review tab) and send it back for your developer to agree to (he or she may not agree to everything, and that's ok as long as you understand what your obligations are); or
3. Decide that some of the terms are not important to you and skip them.

Reviewing a contract this way is an intermediate to advanced topic, and your developer may not be comfortable with it. You can broach the subject by saying that you want to be sure everyone knows where they stand, and you noticed some questions you have were not addressed in the contract. This is meant to help everyone, not to draw a line in the sand. By the way, these are general terms, so if something does not seem like it fits your relationship, don't use it or re-word it to match. The key to a contract is that the language is clear and describes the relationship, and you and your developer know the details best. There is no "magic" language required. Trust your instincts.

Start date

- Work will begin on [insert date, or something like "three days after payment is received," or a date you have agreed upon if there is a wait].

Deadline for delivery

- Work will be complete on [insert date].

Schedule for payment milestones (never, ever pay in full at the start!)

- Payment will be in [number of installments] installments as follows: [Percent due up front]% on sign-up, [percent due]% on agreement of creative design; [percent due]% on sign off of working site (preview); and [final percent to reach 100]% due on launch date (live to the public).

Price and what costs are included

- The quoted price includes: [some ideas: the cost of third party plugins or apps? Fonts and graphics? Design services? Hosting? Domain name purchase?]

Source of the photos and fonts

- “Client will provide all images and fonts to Developer.” [or]
- “Developer shall source photos and fonts from infringement and royalty free sources, and represents and warrants to Client that all images, fonts, and other components of the Site will be properly licensed for Client’s intended use. Developer agrees to indemnify and defend Client from claims of infringement for these items.”

No re-sale of similar design to other coaches or professionals in the same industry as you

- “Developer acknowledges and agrees that he or she will not provide the same design and look and feel to a competitor or other industry member of Client’s for [some reasonable period of time, like 1 year from the Completion Date].”

How access will be given

- “Developer will provide administrative access privileges to the site, including dashboard and hosting, by the start date, and shall not change or revoke access at any time.”

Method of payment

- Payment will be made by [check, cash (don’t do it!), Paypal, etc. *[Take into consideration the best way to ensure you can get a refund or chargeback if necessary. Paypal is great, credit card is good, check is not good, wire (or service like Western Union, very bad), and cash is a disaster]*].

What the final product will look like and how it will function

- [The best way to do this is to include drawings or image mockups of the site and the functions you want it to have. These should be created and discussed with your developer prior to signing the contract, and prior to payment. Then, the contract should state something like:] “Developer will design and build a website which meets the specifications of the attached mockups, which are incorporated by reference as part of this contract.”

- Make sure the contract states the platform (from scratch, Wordpress, Squarespace, etc.). The contract can state, “This agreement provides for [design and build] of a website using [Wordpress.org], [Divi theme].”

How to communicate with your developer (phone, email, text, gchat, etc.) and the maximum time it takes to get a response

- “The parties recognize that timely communication will be key to completing the project on time. Developer is available by [phone, email, text, gchat, etc.] during the hours of [what hours] and will respond to Client within [24 hours, for example].”

Whether you will get follow up support of any kind (small fixes to the site, training on how to use it, transferring hosting to your account) and how (email, phone, etc.) and how long it will take to receive a response. If you are buying an ongoing service or maintenance contract, it is better if this is in a separate contract, but if that is not possible, include provisions like these:

- If you expect to get follow up support, state, “This agreement also provides for technical [or other types of support] support after the launch date of the website.
- This support includes [for example: minor corrections or adjustments to the website such as changing images or fonts; substantive changes like adding plugins, pages, or additional functionality].
- Requests for support will be acknowledged within [number of hours, like 24] hours, and completed within [time frame, like 1 week].

Whether or not the fee is refundable if you change your mind

- It is common that the first installment is non-refundable to account for your developer’s initial meeting time with you, designs that may be created, etc. You can state, “The initial payment is a non-refundable deposit to secure developer time and mockups (which shall be the property of Client). Subsequent installments are contingent on satisfactory completion of the work for that milestone.”

What happens if you do not hear from your developer after [certain period of time, like 72 hours] after contacting him or her

- If you are on a launch schedule, not hearing from your developer within the time frame you identified above can be scary. At what point should you start to worry, at what point do you need to start looking for someone else to complete the job, and at what point can you cancel the contract? For example: “Both parties acknowledge that the website is an important component of Client’s entire business, and therefore

timely completion is critical. If Client does not hear from Developer within 72 hours from a request or communication (unless Developer has notified Client in advance that he or she will not be available during this period), Client may terminate this agreement and terminate Developer's access to the website [or, if you do not have access (don't agree to that by the way! Always have admin privileges before you pay)], "may request that Developer turn over access to Client."

What happens if you and your developer disagree about the final product

- After a significant investment of money and time, you may not agree that the final site either meets the initially agreed upon look and feel or functionality, or that there are unfinished smaller items required before the site can go live. Here are suggested provisions, and you can select all or some that meet your needs:

[For minor changes]

"If the site is substantially complete on the Completion Date, but requires completion of additional, minor items (by way of example and not limitation) update to fonts, broken links, etc., Client may request turnover of the site and hire another developer to complete these items, and may deduct that amount from the final installment due to Developer."

[For major problems]

"If the site does not substantially conform to the specifications by the Completion Date, Developer shall refund all refundable installment payments upon demand by Client."

[If the site looks ok but does not have all the plugins and functionality you requested]

"If the site does not meet the functionality requirements identified in the specifications by the Completion Date (including without limitation, membership features, payment functionality, etc.), Client may request turnover of the site and hire another developer to complete these items, and may deduct that amount from remaining installments due to the Developer, or, if the cost to complete these items exceeds the final installments due, may request a partial refund from Developer."

Where you will resolve your disputes and under what law

- This agreement is governed by the law of [the state where you live], without regard to its conflicts of law provisions. The parties agree to personal jurisdiction in [the state where you live].

No delegation

- I have spoken to many people who have hired a developer that promised his or her expertise to be top notch, but in reality, the person was not so great and delegated

most of the work on freelance sites with usually poor results. You are entering into the contract specifically because you want that person to complete the work, so include a provision like this:

“Developer acknowledges that he or she has been hired on the basis of skills and talents unique to him or her. Therefore, Developer agrees not to delegate or hire out the work required under this agreement, without the express written consent of Client.”

Ownership of site and code

- Developer acknowledges and agrees that work provided by you under this agreement, and your services, are specially ordered and commissioned by Client for use in connection with [web address]. The Work contributed by you shall be considered a "work made for hire" as defined by the copyright laws of the United States. Client is the sole and exclusive owner and copyright proprietor of all rights and title in your work under this agreement, at whatever stage of completion. You hereby irrevocably transfer and assign to us all right, title and interest therein, including all copyrights, as well as all renewals and extensions thereto.

[please note: “work for hire” is a controversial legal doctrine. Your state may interpret it differently. Include this provision as a starting point to ensuring that you retain the legal rights in the design, but realize this this area of law is not entirely settled. Also, your developer may respond by saying there are certain elements you cannot own, such as the dashboard of a wordpress website, which is owned by no one, or plugins, owned by others. You can adjust this paragraph to specify the most important parts, like your content and any custom coding your developer has done.]