Website Development Checklist

Contents

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Checklist	Further information	Notes (if any)
Main commercial considerations		
☐ Confirm each party's legal status and whether any third parties (such as group affiliates) will benefit from the proposed agreement.		
☐ Confirm whether any third-party will guarantee a party's performance or financial obligations.		
☐ Confirm whether a third-party will be used to carry out any preliminary design aspects of the website or associated branding, look and feel.	If a third-party is being used, has the customer secured the rights in these designs sufficient to enable them to be used by the developer and is	

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	the developer willing and able to work with the third-party design agency?	
Commencement and Duration		
☐ Confirm proposed commencement / effective date.		
☐ Is the proposed agreement a fixed term or rolling contract?	Does the agreement end when the development project is completed (and, if so, does there need to be a final completion date)? Or are ongoing services being provided — such as support or training? Where relevant identify notice periods for termination.	
☐ Are there any preconditions which must be satisfied before the proposed agreement can take effect?		
☐ Confirm the nature of any early termination rights.	For example, should the parties have the right to termination for cause only, or can they terminate for convenience? Will there be contract break points, rights to terminate for change of control, breach, insolvency, the customer ceasing to use the website / core software.	
Deliverables by Developer		
☐ Has the customer identified its requirements in relation to the website to be developed?		

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☐ Have the parties written a technical or functional specification?	If technical and functional specifications do not exist, consider whether it would feasible to agree these specifications before entering a full development agreement. If not, consider how the agreement will deal with process and procedure for agreeing them post signature, each party's obligations and the timeframes. Is it possible to agree high-level concepts as a minimum prior to signature?	
☐ Identify the website to be developed, together with any supporting user documentation and / or services (e.g. training, consultancy, hosting, maintenance and support) that will be provided by the supplier.		
☐ Identify any bespoke software to be developed, together with any supporting user documentation and / or services (e.g. training, consultancy, installation, maintenance and support) that will be provided by the supplier.	Confirm whether software will be supplied and licensed in object or source code form	
☐ Confirm the timescales on which the website, any developed software and any associated services are to be delivered.	If it is not possible to agree this prior to signature of the agreement, identify the obligations and timescales for the creation of a project plan and project milestones following signature. If using agile development methodology agree the mechanisms and processes that will govern it.	

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☐ Confirm who will do the testing, including when and how it will be done and confirm the consequences of the website / core software failing testing.		
☐ Confirm whether there is to be any pilot testing or phased roll out of the website.		
Services		
☐ Clarify what the services (if any) will be, who they will be provided by (perhaps a subsidiary or affiliate), and the locations at which they will be provided.	For example, hosting, maintenance and support, and further website development. Be clear as to what will be provided and what will not be provided and any requirements for hand-over from any existing services provider. If appropriate, particularly where there are multiple service lines and service locations, include a detailed services specification.	
☐ Will the supplier provide any performance warranties or service levels?	Confirm what general or specific performance undertakings are given, how long they will last and / or how they will be agreed.	
☐ Will there be any deductions, service credits, termination or other remedies for breach of service levels?		
Intellectual Property Rights (IPRs)		
☐ Identify which party is responsible for registering the domain name, paying the registration fee and who will be the registrant.		

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☐ Identify the relevant IPRs in the website / underlying software to be developed.	Distinguish between IPRs in current website / software and future developments as appropriate and confirm who currently owns them and who will own them in the future.	
☐ Will the supplier transfer or assign ownership of IPRs in the website / software or does the supplier want to retain the IPRs (particularly in any core product) so that it can use them again to develop products for other customers?	Note that the customer will generally want to own the website (including the domain name), particularly if they are maintaining this themselves.	
☐ Depending on whom the IPRs in the website will be owned by, to what extent will the other party require a license to use the relevant IPRs?	Ensure that the scope of any licence grants sufficient rights to enable the party to use the IPRs as it envisages now and in the future. Try to capture all known and predicted uses.	
☐ Will any licences of IPRs will be exclusive?		
☐ Is any third-party software being used?	Are there any restrictions on use / relevant third-party licence terms? Will this be licensed by customer directly or will the enter into the licence with the third-party and then grant a sublicence to the customer? Is there any open source software in the proposed solution? If so what are the applicable licence terms and has the developer complied with them? .	
☐ Is any third-party content (aside from software) being used in the website?	Are there any restrictions on use of this content or relevant third-party licence terms? Identify which party will have responsibility for obtaining	

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	the relevant third-party licences / consents to use this content.	
Pricing, fees and expenses		
☐ Confirm the fee structure for the website development (e.g. whether fixed fee, commercial rate, hourly / daily rate, expenses or other) and whether payment is to be linked to the completion of project milestones.	Detail any service charges for provision of ongoing services, i.e. hosting, maintenance and support, further development, etc.	
☐ Confirm which party will pay any ancillary costs (for example, equipment or delivery).		
☐ Confirm whether amounts are to be exclusive of VAT and taxes.		
☐ Confirm whether price is to vary and, if so, confirm the frequency and amount / calculation.	It is important in a website / software development agreement to be clear what prices relate to, how they may change if the project develops (e.g. as a result of additions or changes to the website and the underlying software being provided), and to stipulate that changes should be agreed through the change control procedure.	
☐ Confirm payment terms, invoicing process and interest rate or other remedies for late payment.		
Other standard legal terms and conditions		
☐ Identify any key personnel involved in the website development.	This may involve different individuals during the build phase (i.e. project managers) and then	

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	during the run phase, if services are being provided (i.e. account managers). Set out procedures for agreeing what should happen in the event that these key personnel leave or are dismissed. How much control is required over the selection of replacement personnel?	
☐ Confirm when title and risk in the website / developed software / other key deliverables will pass and when the same will be deemed to have been delivered, installed or accepted.		
☐ Identify exclusions and limitations on liability and liability caps and any types of loss for which a party has unlimited liability.		
☐ Confirm what each party must do on termination (e.g. returning each party's confidential information or handing over any licensed software that exists at the date of termination). Are there any licensed rights that will continue post-termination? Will there be any escrow release?		
☐ Confirm general warranties and indemnities (e.g. for IPR infringement or breach of confidence and whether subject to limitations).		
☐ Identify specific obligations regarding confidentiality and publicity and their duration.		

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☐ Consider if it is appropriate for both parties to only be able to assign or subcontract rights under the agreement with the prior consent of the other.	Should there be some exceptions, e.g. associated companies of either party, pre-approved subcontractors of the supplier?	
☐ Consider whether the agreement should identify a process for dispute resolution.	This could be all or one of expert determination, mediation, arbitration and / or courts.	
☐ Confirm that the agreement is to be governed by laws of England and Wales, having exclusive jurisdiction.		
☐ Consider other boilerplate provisions to include.	For example: —escrow arrangements —non-solicitation —rights of third parties —entire agreement —anti-bribery —force majeure —insurance —data protection —freedom of information —publicity —notice —severability —compliance with law —variation —change control —reporting —audits and investigations —waiver	

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	—set-off —governing law & jurisdiction —disputes resolution and ADR	
☐ Confirm how the agreement will be signed / executed. Consider counterparts, execution clauses, electronic completion and further assurance clause (including a power of attorney, if relevant).		

Checklist Notes:

- This checklist is provided for the purposes of obtaining a customer's instructions.
- The customer's responses will be taken into consideration in the preparation of requested documentation.
- No warranty is given that the checklist is comprehensive in its questions or that it covers all of the customer's requirements.
- The customer is required to provide all relevant information in any event.
- Documents prepared by contracts-direct.com are provided without le.g.al advice.
- Customers are recommended to obtain legal advice on their documentation.