

Meredith Matthews, “Braindouche Development” Terms and Conditions (Updated September 28, 2011)

A. Content and Liability

Client guarantees that it owns or holds appropriate license to use all images, elements, concepts, and content provided as part of the overall design or content of the site.

B. Design Rights, File Access, and Usage

Until the contract balance is paid in full, Meredith Matthews maintains ownership of all work created under this agreement. After the contract balance has been paid in full, all rights to the work are transferred to Client, so long as Client grants Consultant the right to use the work for marketing and promotional purposes.

C. Original Work

Consultant certifies that, with the exception of any materials provided by Client, any stock images or fonts obtained or purchased for use in the project, and code sourced from GPL or otherwise public sources, all work is original and not copied in whole or part from any source.

D. Terms

All invoices are payable upon receipt. Consultant will make a good faith effort to contact the client regarding past due invoices. If any invoice becomes 15 days past due, Consultant may, at her discretion, suspend services. If payment is not received within 30 days of the invoice date, Consultant may provide the Client with a written notice of Termination (see Item K).

In order for final files to be released and/or published (“launched”), the project balance and invoices for any additional authorized work must be paid in full.

A monthly service charge of 10% will be added to balances greater than 30 days past due.

E. Technical Overview and Scope of Work

Website code created under the terms of this agreement will be in line with modern web standards, including valid XHTML/CSS3, and will be compatible with Internet Explorer versions 7, 8, and 9 and Firefox versions 3.5+. Whenever possible, efforts will be made to ensure compatibility with Google Chrome, Apple Safari, Opera, and Mozilla Gecko/Netscape. **Unless specifically outlined in the scope of work, no guarantees are made for compatibility with mobile browsers. Internet Explorer versions prior to 7 are not supported.**

The scope of work is limited to items defined in the Project Estimate, Project Path, or Project Proposal, and, unless otherwise expressly stated, does not include content, hosting, or ongoing maintenance, all of which remain the responsibility of the Client. Hosting and maintenance packages are available. A Linux hosting package with PHP5 and MySQL, with an available database, is required.

F. Warranties, Additional Work, and Ongoing Support

Consultant agrees to ensure that the website retains full functionality and conforms to initial project specifications during the warranty period of one year from launch date. Consultant also agrees to provide at no cost to the Client reasonable technical and user support, related directly to the project's administration and use, for the duration of the warranty period as defined above. This support may include correcting any errors or failure of the site to conform to the initial project specifications, but will not include support for the implementation, use, or development of enhancements to the originally contracted project.

Work that is outside of the scope of this agreement will be billed in half-hour increments at a rate of 60.00 USD per hour and must be authorized in writing by the Client. Authorization via email is sufficient.

After-hours and emergency work and technical support will be billed in hourly increments at a rate of 150.00 USD per hour and must be authorized in writing by the Client. Authorization via email is sufficient. After-hours and emergency support can be reached at support@braindouche.com.

Hourly rates for ongoing work are subject to change.

G. Limitation of Liability

The products and services outlined herein are provided on an "as-is" basis without warranties of any kind, expressed or implied. In no event will Consultant be liable to Client or Client's customers for any lost profits or sales, real or perceived, or incidental, indirect, special, or consequential damages or injury arising out of Client's use or inability to use the product/services, failure of product performance, disruption in transmission, or authorized or unauthorized access to any data. Some areas have laws prohibiting these clauses, so this section might not apply to you.

H. Client Responsibility and Deadlines

Client responsibilities and deadlines will be outlined in the Project Path, Project Estimate, or Project Proposal; the courtesy of prompt remittance is requested. Failure to furnish required materials within 2 weeks of any requested date nullifies project schedule, timelines, and deliverable dates; upon receipt of the requested deliverables, a new Project Path or Timeline will be provided and a Restructuring Fee equal to 10% of the project amount will be assessed. Client must remit payment of the Restructuring Fee and agree to the new Project Path or Timeline in order for work to proceed.

If the Client fails to furnish required materials within 6 weeks of any requested date, Consultant may provide the Client with a written notice of termination (see Item K).

I. Payment

Consultant accepts payment via Visa, MasterCard, American Express, Discover, PayPal or business check. Electronic funds transfers are accepted on a case-by-case basis. Checks must be made payable to Consultant.

J. Special Terms for Check Payment

If you choose to pay by check, and your check is returned for non-sufficient funds, you may be charged additional fees by my bank, your bank and by Consultant. The use of a check for payment is your acknowledgement and acceptance of this policy and its terms and conditions.

K. Cancellation, Termination, and Refunds

Termination by Client

Consultant will make a good faith effort to provide deliverables that are in accordance with the project schedule and specifications. If during a milestone review the work is found by the Client to not be in accordance with the project schedule and specifications, the Client may provide Consultant with a written notice of termination. In the event of termination by Client, the deposit and any milestone payments remitted to date will be retained by Consultant. Payment of any outstanding balances, and payment for any additional work both authorized and performed, is due immediately. Any and all warranties, support, and training agreements are voided immediately upon Termination.

In the event of termination by Client, Consultant retains ownership of, and rights to, any and all work created by Consultant under the terms and scope of the project. Files and rights of use, as defined as deliverables in Item B, may be released on an as-is basis in exchange for a file transfer fee equal to 15% of the contract amount. No design concepts, drafts, or other in-process intellectual property created by Consultant will be provided; these remain the sole property of Consultant.

Termination

In the event of Termination by Consultant, the deposit and any milestone payments remitted to date will be retained by Consultant. Payment of any outstanding balances, and payment for any additional work both authorized and performed, is due immediately. Any and all warranties, support, and training agreements are voided immediately upon Termination.

In the event of Termination by Consultant, Consultant retains ownership of, and rights to, any and all work created by Consultant under the terms and scope of the project. Files and rights of use, as defined as deliverables in Item B, may be released on an as-is basis in exchange for a file transfer fee equal to 25% of the remaining contract amount. No design concepts, drafts, or other in-process intellectual property created by Consultant will be provided; these remain the sole property of Consultant.

Emergency Termination

In the event that Consultant becomes unable to fulfill the terms of the agreement due to an emergency or other unexpected event, Consultant will promptly provide Client with a written notice of termination. Consultant will make every effort to provide Client with all files (including concepts and drafts), project plans and notes, and any additional files necessary for another firm to complete the project. If circumstances allow, Consultant will provide limited project consulting services at no cost to the Client in order to ensure a smooth project transition.

Cancellation and Refunds

If Client provides Consultant with a written notice of cancellation within 24 hours of Consultant's receipt of the project deposit, 100% of the deposit, less processing fees (if applicable), will be refunded. If Client provides Consultant with written notice of cancellation within 72 hours of Consultant's receipt of the project deposit, 75% of the deposit, less processing fees (if applicable) will be refunded. In all other instances of cancellation and termination, 100% of the project deposit and any milestone payments are non-refundable and will be retained by Consultant.