

BASIC TERMS + CONDITIONS

DEFINITIONS

As used herein and throughout this Agreement:

“*Agreement*” means the entire content of this Basic Terms & Conditions document, the Proposal or Estimate document(s), together with any exhibits, schedules or attachments hereto.

“*Copyrights*” means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under U.S. Copyright Law.

“*Deliverables*” means the Services and work product specified in the Proposal or Estimate to be delivered by Designer to Client, in the form and media specified in the Proposal or Estimate.

“*Designer Tools*” means all design tools developed and/or utilized by Designer in performing the Services, including without limitation pre-existing and newly developed software including source code, Web authoring tools, type fonts, application tools, comps, concepts, sketches, visual presentations, rejected designs, layered files, or other alternate or preliminary designs and documents developed by Designer, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as Web site design, architecture, layout, navigational and functional elements.

“*Final Art*” means all creative content developed or created by Designer, or commissioned by Designer, exclusively for the Project and incorporated into and delivered as part of the Final Deliverables, including and by way of example, not limitation, any and all website design, visual design, visual elements, graphic design, illustration, photography, animation, sounds, typographic treatments and text, modifications to Client Content, and Designer’s selection, arrangement and coordination of such elements together with Client Content and/or Third Party Materials.

“*Project*” means the scope and purpose of the Client’s identified usage of the work as described in the Proposal or Estimate.

“*Services*” means all Services and the work product to be provided to Client by Designer as described and otherwise further defined in the Proposal.

“*Trademarks*” means trade names, words, symbols, designs, logos or other devices or designs used in the Final Art and Deliverables to designate the origin or source of the goods or services of Client.

EFFECTIVE DATE

The terms of any Proposal or Estimate shall be effective for ninety (90) days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Proposal, together with any related terms and conditions and Deliverables, may be subject to amendment, change or substitution.

FEES AND CHARGES

Fees. In consideration of the Services to be performed by Designer, Client shall pay to Designer fees in the amounts according to the payment schedule set forth in the Proposal or Estimate.

Expenses. The Project pricing includes Designer’s fee only (unless otherwise noted). Client shall pay Designer’s expenses incurred in connection with this Agreement including, but not limited to, printing and production, photography and/or artwork licenses, online access fees, postage, shipping, courier, presentation materials, and photocopies, at cost plus Designer’s standard markup of twenty percent (20%). No additional charges beyond the quoted amount shall be incurred for the project unless approved by the Client.

Invoices. All invoices are payable within thirty (30) days of receipt. A 1.5% monthly service charge is payable on all overdue balances. Payments will be credited first to late payment charges and next to the unpaid balance. Client shall be responsible for all collection or legal fees necessitated by late or default payment. Designer reserves the right to withhold delivery and any transfer of ownership if accounts are not current or overdue invoices are not paid in full, inclusive of any and all outstanding taxes, expenses, fees, charges, or the costs of changes.

GRANT OF RIGHTS

Client Content. Client Content, including all pre-existing Trademarks, shall remain the sole property of Client or its respective suppliers, and Client or its suppliers shall be the sole owner of all rights in connection therewith. Client hereby grants to Designer a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the Client Content solely in connection with Designer’s performance of the Services and limited promotional uses of the Deliverables as authorized in this Agreement.

Trademarks. Upon completion of the Services and expressly conditioned upon full payment of all fees, costs and out-of-pocket expenses due, Designer assigns to Client all ownership rights, including any copyrights, in and to any artworks or designs comprising the Final Art and Deliverables created by Designer for use by Client as a Trademark. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment. Client shall have sole responsibility for ensuring that any proposed trademarks or Final Art and Deliverables intended to be a Trademark are available for use in commerce and federal registration and do not otherwise infringe the rights of any third party. Client hereby indemnifies, saves and holds harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by any third party alleging any infringement arising out of Client’s use and/or failure to obtain rights to use or use of the Trademark.



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Designer Tools. All Designer Tools are and shall remain the exclusive property of Designer. Designer hereby grants to Client a nonexclusive, nontransferable (other than the right to sublicense such uses to Client's Web hosting or Internet service providers), perpetual, worldwide license to use the Designer Tools solely to the extent necessary with the Final Deliverables for the Project. Client may not directly or indirectly, in any form or manner, decompile, reverse engineer, create derivative works or otherwise disassemble or modify any Designer Tools comprising any software or technology of Designer. Client does has the right to update any original web code that Designer supplies for a website.

Assignment. Upon completion of the Services, and expressly subject to full payment of all fees, costs and out-of-pocket expenses due, Designer hereby assigns to Client all right and title in and to the Final Art and Deliverables. Designer agrees to reasonably cooperate with Client and shall execute any additional documents reasonably required to evidence such assignment.

Attribution. Designer retains all rights of attribution and integrity provided by the United States Copyright Law, including, but not limited to, 17 U.S.C. §106A. Designer also retains sole discretion to request the display or removal of attribution on all digital, printed or published forms of the Final Art and Deliverables. Client has the right to remove any Designer attribution at their request.

Samples. Designer retains the right to reproduce, publish, display, and use the Final Art and Deliverables for promotional purposes, including, but not limited to, use in Designer's portfolio and website, in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence, and to be credited with authorship of the Deliverables in connection with such uses.

CLIENT RESPONSIBILITIES

Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner: (a) coordination of any decision-making with parties other than the Designer; (b) provision of Client Content (all materials, information, photography, writings and other creative content provided by Client in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal or Estimate); and (c) final proofreading and in the event that Client has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product, Client shall incur the cost of correcting such errors.

CONFIDENTIAL INFORMATION

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Proposal except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

RELATIONSHIP OF THE PARTIES

Independent Contractor. Designer is an independent contractor, not an employee of Client or any company affiliated with Client. Designer shall provide the Services under the general direction of Client, but Designer shall determine, in Designer's sole discretion, the manner and means by which the Services are accomplished. Designer and the work product or Deliverables prepared by Designer shall not be deemed a work for hire as that term is defined under Copyright Law.

Designer Agents. Designer shall be permitted to engage and/or use third party designers or other service providers as independent contractors in connection with the Services ("Design Agents").

No Exclusivity. The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the similar nature to those provided by Designer, and Designer shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Designer.

WARRANTIES

Warranty Period. "Support Services" means commercially reasonable technical support and assistance to maintain and update the Deliverables, including correcting any errors or Deficiencies, but shall not include the development of enhancements to the Project or other services outside the scope of the Proposal. Designer agrees that any web code produced as a Deliverable will fulfill it's intended purpose. All work is tested in the current versions of major desktop and mobile browsers including those made by Apple (Safari, iOS), Google (Chrome, Android), Microsoft (Edge), Mozilla Firefox, and Opera. Designer also tests to ensure that users of Microsoft Internet Explorer 11 and up get an appropriate experience. Designer doesn't test in older browsers unless agreed to separately. Designer agrees to troubleshoot any found issues until they work for up to ninety (90) days after a website is put into production and/or launched.

Maintenance. Designer offers a Maintenance Plan for a quarterly fee which includes the following services performed each quarter unless specified otherwise: Update WordPress, plugins, and themes to latest versions (performed weekly); scan site for malware and any other security breaches; uptime monitoring; confirm automatic backups are running correctly; basic updates of content, design or functionality; priority support within 24 hours; and simple troubleshooting and fixes at no additional cost. The Maintenance Plan can be cancelled at any time.



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INDEMNIFICATION/LIABILITY

Indemnification. Client agrees to indemnify and hold harmless the Designer against any and all claims, costs, and expenses, including attorney's fees, due to materials included in the Work at the request of the Client for which no copyright permission or privacy release was requested or uses that exceed those allowed pursuant to a permission or release.

Limitation of Liability. THE SERVICES AND THE WORK PRODUCT OF DESIGNER ARE SOLD "AS IS." IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF DESIGNER AND DESIGN AGENTS TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE NET PROFIT OF DESIGNER. IN NO EVENT SHALL DESIGNER BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MATERIALS OR THE SERVICES PROVIDED BY DESIGNER, EVEN IF DESIGNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

TERM AND TERMINATION

This Agreement shall commence upon the Effective Date of the Proposal or Estimate and shall remain effective until the Services are completed and delivered.

In the event that the project stalls due to the Client's actions, including not providing Client Content in a timely manner or not providing feedback on Deliverables, the Project shall be considered on-hold. Once a project is on-hold for over sixty (60) days, Designer can terminate the project. Client will be responsible for a restart fee in the amount of \$500 or 5% of the total project cost, whichever is greater, if Client desires to resume the project.

In the event of termination by Client, Designer shall be compensated for the Services performed through the date of termination in the amount of (a) any advance payment, (b) a prorated portion of the fees due, or (c) hourly fees for work performed by Designer or Designer's Agents as of the date of termination, whichever is greater; and Client shall pay all expenses, fees, and out of pockets incurred through and up to, the date of cancellation, not to exceed the original quoted fees unless otherwise approved by the Client. The initial deposit/advance payment is non-refundable.

These Basic Terms & Conditions shall apply to all Projects performed by the Designer on behalf of the Client pursuant to a Proposal or Estimate provided by the Designer and accepted by the Client, as if such Basic Terms & Conditions are stated in their entirety in such Proposal or Estimate, unless such Basic Terms & Conditions are altered in writing and signed by both parties.

MISCELLANY

All disputes arising under this Agreement shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the arbitration award may be entered in any court having jurisdiction thereof. This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives. This Agreement constitutes the entire understanding between the parties. Its terms can be modified only by an instrument in writing signed by both parties, except that the Client may authorize expenses or revisions orally. A waiver of a breach of any of the provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof. This Agreement shall be governed by the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date below.

Client

Date

Designer

Date