



# Basic Terms and Conditions

## 1. Definitions

As used herein and throughout this Agreement:

- 1.1 *Agreement* means the entire content of this Basic Terms and Conditions document, the Proposal document(s), Schedule A, together with any other Supplements designated below, together with any exhibits, schedules or attachments hereto.
- 1.2 *Client Content* means all materials, information, factual, promotional, or other advertising claims, photography, writings and other creative content provided or required by Client for use in the preparation of and/or incorporation in the Deliverables.
- 1.3 *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.
- 1.4 *Deliverables* means the services and work product specified in the Proposal to be delivered by Designer to Client, in the form and media specified in the Proposal.
- 1.5 *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, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as Website design, architecture, layout, navigational and functional elements.
- 1.6 *Final Deliverables* means the final versions of Deliverables provided by Designer and accepted by Client.
- 1.7 *Final Works* means all creative content developed by Designer, or commissioned by Designer, exclusively for the Project and incorporated in the Final Deliverables, including, but not limited to, any and all visual elements, graphic design, illustration, photography, animation, motion design, audio-visual works, 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.
- 1.8 *Preliminary Works* means all creative content including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by Designer and

which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Works.

- 1.9 *Project* means the scope and purpose of the Client's identified usage of the work product as described in the Proposal.
- 1.10 *Services* means all services and the work product to be provided to Client by Designer as described and otherwise further defined in the Proposal.
- 1.11 *Third Party Materials* means proprietary third party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.
- 1.12 *Trademarks* means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client.
- 1.13 *Working Files* means all underlying work product and digital files utilized by Designer to create the Preliminary Works and Final Works other than the format comprising the Final Deliverables.

## **2. Proposal**

The terms of the Proposal shall be effective for \_\_\_\_\_ (\_\_\_) calendar 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.

## **3. Fees and Charges**

- 3.1 *Fees.* In consideration of the Services to be performed by Designer, Client shall pay to Designer fees in the amounts and according to the payment schedule set forth in the Proposal, and all applicable sales, use or value added taxes, even if calculated or assessed subsequent to the payment schedule.
- 3.2 *Expenses.* Client shall pay Designer's expenses incurred in connection with this Agreement as follows: (a) incidental and out-of-pocket expenses including but not limited to costs for telephone calls, postage, shipping, overnight courier, service bureaus, typesetting, blueprints, models, presentation materials, photocopies, computer expenses, parking fees and tolls, and taxis at cost plus Designer's standard markup of \_\_\_\_\_ percent (\_\_\_%), and, if applicable, a mileage reimbursement at \_\_\_\_\_ per mile; and (b) travel expenses including transportation, meals, and lodging, incurred by Designer with Client's prior approval.

- 3.3 *Additional Costs.* The Project pricing includes Designer's fee only. Any and all outside costs including, but not limited to, equipment rental, photographer's costs and fees, photography and/or artwork licenses, prototype production costs, talent fees, music licenses and online access or hosting fees, will be billed to Client unless specifically otherwise provided for in the Proposal.
- 3.4 *Invoices/Payments.* Client shall pay all invoices within \_\_\_\_\_ (\_\_\_) calendar days of the invoice date. A monthly service charge of 1.5 percent (or the greatest amount allowed by state law) may be charged 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 lateness or default in payment. Designer reserves the right to withhold Deliverables if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full, including any outstanding Additional Costs, Taxes, Expenses, Fees, Charges, or the cost of Changes.

#### **4. Changes**

- 4.1 *General Changes.* Unless otherwise provided in the Proposal, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at Designer's standard hourly rate of \_\_\_\_\_ per hour. Such charges shall be in addition to all other amounts payable under the Proposal, despite any maximum budget, contract price or final price identified therein. Designer may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes.
- 4.2 *Substantive Changes.* If Client requests or instructs Changes that amount to a revision in or near excess of \_\_\_ percent (\_\_\_%) of the time required to produce the Deliverables, and or the value or scope of the Services, Designer shall be entitled to submit a new and separate Proposal to Client for written approval. Work shall not begin on the revised services until a fully signed revised Proposal and, if required, any additional retainer fees are received by Designer.
- 4.3 *Timing.* Designer will prioritize performance of the Services as may be necessary or as identified in the Proposal, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the Proposal. Client agrees to review Deliverables within the time identified for such reviews and to promptly either (i) approve the Deliverables in writing or (ii) provide written comments sufficient to identify Client's concerns, objections or corrections. Designer shall be entitled to request written clarification thereof. Client acknowledges and agrees that Designer's ability to meet schedules is entirely dependent upon Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the

Proposal and that any delays in Client's performance or Changes in the Services or Deliverables requested by Client may delay delivery of the Deliverables. Any such delay caused by Client shall not constitute a breach of this Agreement by Designer.

- 4.4 *Testing and Acceptance.* Designer will exercise commercially reasonable efforts to test Deliverables requiring testing and to make all necessary corrections prior to providing Deliverables to Client. Client, within five (5) business days of receipt of each Deliverable, shall notify Designer, in writing, of any failure of such Deliverable to comply with the specifications set forth in the Proposal, or of any other objections, corrections, changes or amendments Client wishes made to such Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and Designer will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice from Client, the Deliverable shall be deemed accepted.
- 4.5 *Suspension Fee.* Client acknowledges that Designer has reserved time exclusively to perform the Services. Accordingly, in the event Client causes a delay in the Services ("Client Delay"), Client shall pay to Designer, in addition to fees and expenses already incurred through the date of such Client Delay, a Suspension Fee equal to Designer's hourly fees for idle time caused by the Client Delay, unless Designer is able to secure other work for that time for the same or greater compensation. Client acknowledges that if Designer accepts other work because of a Client Delay, Designer may adjust time to complete the Services as necessary to accommodate such other work.

## **5. 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 in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal;
- (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 ; and
- (d) ensuring that all information and claims comprising Client Content are accurate, legal and conform to applicable standards in Client's industry.

## **6. Attribution/Promotions**

Client agrees to include in all displays or publications of the Final Works attribution and/or copyright notice in Designer's name in the form, size and location as incorporated by Designer in the Deliverables, or as otherwise directed by Designer. Designer retains the right to reproduce, publish and display the Final Works, Deliverables, and Preliminary Works, to the extent they do not contain Client's Confidential Information, in Designer's portfolios and Websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project, and, if applicable, the services provided to the other party on its Website and in other professional materials, and, if not expressly objected to, include a link to the other party's Website.

## **7. 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 ("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 Project, except as may be required by a court or government 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.

## **8. Relationship of the Parties**

8.1 *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. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.

8.2 *Design 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"). Designer shall remain fully responsible for such Design Agents' compliance with the various terms and conditions of this Agreement.

- 8.3 *No Solicitation.* During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any employee or Design Agent of Designer, whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation or work-for-hire event occurs, Client agrees that Designer shall be entitled to an agency commission to be the greater of either (a) 25 percent of said person's starting salary with Client, or (b) 25 percent of fees paid to said person if engaged by Client as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any month during which the independent contractor performed services for Client. Designer, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity.
- 8.4 *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 same or 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.

## **9. Warranties and Representations**

- 9.1 *By Client.* Client represents, warrants and covenants to Designer that (a) Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Client Content, (b) to the best of Client's knowledge, the Client Content is accurate, legal, conforms to ethical standards of the Client's industry, does not infringe the rights of any third party, and use of the Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties, (c) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and (d) Client shall comply with all laws and regulations as they relate to the Services and Deliverables.
- 9.2 *By Designer.*
- (a) Designer hereby represents, warrants and covenants to Client that Designer will provide the Services in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.
- (b) Designer further represents, warrants and covenants to Client that (i) except for Third Party Materials and Client Content, the Final Deliverables shall be the original work of Designer and/or Designer Agents, (ii) if the Final Deliverables include the work of Designer Agents, Designer shall have secured agreements from the Designer Agents granting all necessary rights, title and interest in and to the Final Deliverables sufficient for Designer to grant the intellectual property

rights provided in this Agreement, and (iii) to the best of Designer's knowledge, the Final Works (excluding Client Content and Third Party Materials), and use of same in connection with the Project, will not violate the rights of any third parties. Client acknowledges that Designer will not conduct any type of intellectual property clearance search (e.g., copyright, trademark, utility patent or design patent searches). If Client or any third party authorized by Client modifies or uses the Deliverables outside the scope of rights granted in this Agreement, or otherwise in violation of this Agreement, all representations and warranties of Designer shall be void.

**(c) Except for the express representations and warranties stated in this Agreement, Designer makes no warranties whatsoever. Designer explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the Project.**

## **10. Indemnification/Liability**

10.1 *By Client.* Client agrees to indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances Designer shall promptly notify Client in writing of any claim or suit; (a) Client has sole control of the defense and all related settlement negotiations; and (b) Designer provides Client with commercially reasonable assistance, information and authority necessary to perform Client's obligations under this section. Client will reimburse the reasonable out-of-pocket expenses incurred by Designer in providing such assistance.

10.2 *By Designer.* Designer agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses or expenses (collectively "Liabilities") arising out of any meritorious claim, demand, or action by a third party which is inconsistent with Designer's representations and warranties made herein, except in the event any such Liabilities arise directly as a result of Client's gross negligence or misconduct, provided that (a) Client promptly notifies Designer in writing of the claim; (b) Designer shall have sole control of the defense and all related settlement negotiations; and (c) Client shall provide Designer with the assistance, information and authority necessary to perform Designer's obligations under this section. Notwithstanding the foregoing, Designer shall have no obligation to defend or otherwise indemnify Client for any claim arising out of or due to Client Content, Third Party Materials, modifications of or content added to the Deliverables by Client or third parties, improper or illegal use of Deliverables, use of Deliverables not authorized under this Agreement, or the failure to update or maintain Deliverables.



10.3 *Settlement Approval.* The indemnifying party may not enter into any settlement agreement without the indemnified party's written consent.

10.4 *Limitation of Liability.* **The services and the work product of Designer are provided "as is." In all circumstances, the maximum liability of Designer, its directors, officers, employees, design agents and affiliates, 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 total Project fee 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.**

## **11. Term and Termination**

11.1 *Term.* This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered, or otherwise terminated as set forth herein.

11.2 *Termination.* This Agreement may be terminated for convenience at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or for cause if any party:  
(a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or  
(b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within ten (10) days from receipt of written notice of such breach.

11.3 In the event of termination, 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 and/or Designer Agents as of the date of termination, whichever is greater; and Client shall pay any outstanding Additional Costs, Taxes, Expenses, Charges, and costs of Changes incurred through the date of termination. In the event of termination for convenience by Client, Client shall pay in addition to the above an early termination fee equal to 25% of the total Project fee, Schedule A shall not be effective, and Client shall not have rights to use the Deliverables except upon written consent from Designer provided after such termination.

- 11.4 In the event of termination for convenience by Designer or for cause by Client, and upon full payment of compensation as provided herein, Designer grants to Client such right and title as provided for in Schedule A of this Agreement with respect to those Deliverables provided to, and accepted by Client as of the date of termination.
- 11.5 Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.
- 11.6 *Work Stoppage Option.* If Designer has grounds to terminate this Agreement for breach under Section 11.2(b), Designer may elect to suspend work until Client cures the breach and agrees to amend the Proposal to adjust fees, including Suspension Fees, and schedules as reasonably required by Designer.

## **12. General**

- 12.1 *Modification/Waiver.* This Agreement may be modified by the parties only in writing signed by both parties, except that Designer's invoices may include, and Client shall pay, Additional Costs, Expenses, Charges, and costs of Changes that Client authorizes by email or a project management platform utilized for the Project. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.
- 12.2 *Notices.* All notices to be given hereunder shall be transmitted in writing via a project management platform utilized for the Project, e-mail, or certified or registered mail, return receipt requested, to the addresses identified below, unless notification of change of address is given in writing. Notice shall be effective upon receipt or in the case of email, upon confirmation of receipt (by automated confirmation or reply by the recipient).
- 12.3 *No Assignment.* Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party, except that this Agreement may be transferred or sold as part of a transfer or sale of the assigning party's entire business or portion thereof relating to the Project.
- 12.4 *Force Majeure.* Designer shall not be deemed in breach of this Agreement if Designer is unable to complete the Services or any portion thereof by reason of fire, earthquake, flood, hurricane or other severe weather, labor dispute, act of war, terrorism, riot or other severe civil disturbance, death, illness or incapacity of Designer or any local, state, federal, national or international law,

governmental order or regulation or any other event beyond Designer's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Designer shall give notice to Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

- 12.5 *Governing Law and Dispute Resolution.* The formation, construction, performance and enforcement of this Agreement shall be in accordance with the laws of the United States and the state of \_\_\_\_\_ without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, either party may commence mediation and/or binding arbitration through the American Arbitration Association, or other forum mutually agreed to by the parties. The prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its attorneys' fees and costs. In all other circumstances, the parties specifically consent to the local, state and federal courts located in the state of \_\_\_\_\_. The parties hereby waive any jurisdictional or venue defenses available to them and further consent to service of process by mail. Client acknowledges that Designer will have no adequate remedy at law in the event Client uses the Deliverables in any way not permitted hereunder, and hereby agrees that Designer shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.
- 12.6 *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.
- 12.7 *Interpretation.* Section headings are solely for convenience and reference only and shall not effect the scope, meaning, intent or interpretation of the provisions of this Agreement nor otherwise be given any legal effect. Any design terminology shall be defined according to standard design industry usage, and any dispute as to the meaning or scope of design terminology shall be determined by Designer in good faith. Any other ambiguities shall be resolved with the most reasonable and legally valid construction, without regard to authorship of such provisions.

12.8 *Integration.* This Agreement comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement. In the event of a conflict between the Proposal and any other Agreement documents, the terms of the Proposal shall control. This Agreement comprises this Basic Terms and Conditions document, the Proposal, Schedule A, and the following documents as indicated by the parties' initials:

\_\_\_ \_\_\_ Supplement 1: Print-Specific Terms and Conditions

\_\_\_ \_\_\_ Supplement 2: Interactive-Specific Terms and Conditions

\_\_\_ \_\_\_ Supplement 3: Environmental-Specific Terms and Conditions

\_\_\_ \_\_\_ Supplement 4: Motion-Specific Terms and Conditions

By their execution below, the parties hereto have agreed to all of the terms and conditions of this Agreement effective as of the last date of signature below, and each signatory represents that it has the full authority to enter into this Agreement and to bind her/his respective party to all of the terms and conditions herein.

Designer:  
[Designer name]

Client:  
[Client name]

[Address]

[Address]

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

By:  
[Client officer name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# **Schedule A: Intellectual Property Provisions**

## **Option 4: Work Made for Hire**

## **IP 1. Client's Intellectual Property Ownership**

- IP 1.1 *Work Product.* Upon completion of the Services, and expressly conditioned upon full payment by Client of all fees and costs due to Designer:
- (a) *Work Made for Hire.* Subject to Section IP 2.2 below, to the extent that the Deliverables include any work of authorship entitled to protection under U.S. Copyright Law that has been newly created by Designer for the Project (“Work Product”), the parties agree that the Work Product has been specially ordered and commissioned by Client for a collective work, a supplementary work or other category of work eligible to be treated as a work made for hire under the United States Copyright Act; the Work Product shall be deemed a commissioned work and a work made for hire to the greatest extent permitted by law; and Client shall be the sole author of the Work Product according to the United States Copyright Act;
- (b) *Assignment.* To the extent that any Work Product is not properly characterized as a work made for hire, Designer hereby assigns to Client all rights, title and interest in such Work Product, including but not limited to Copyrights, in perpetuity and throughout the world; and
- (c) *Documentation.* Designer shall deliver to Client all Working Files related to the Work Product. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to secure Client’s rights in and to the Work Product as set forth herein, and Client shall reimburse Designer for Designer’s reasonable time and out-of-pocket expenses in connection therewith.
- IP 1.2 *Trademarks.* Client shall have sole responsibility for ensuring that Trademarks do not infringe the rights of third parties, and Client shall indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party alleging trademark infringement, or arising out of Client’s failure to obtain trademark clearance or permissions, for use of Trademarks.
- IP 1.3 *Client Content.* 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 promotional uses of the Deliverables as authorized in this Agreement.

## **IP 2. Licensed Rights**

- IP 2.1 *Third Party Materials.* Intellectual property rights in Third Party Materials shall be owned by the respective third parties. Designer shall inform Client of all Third Party Materials to be procured by Designer that Client may need to license at Client’s own expense, and unless otherwise arranged by Client, Designer shall obtain a license for Client to use the Third Party Materials consistent with the usage rights granted herein. Client shall indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses arising

out of any claim, demand, or action by a third party arising out of Client's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Final Works at Client's request.

IP 2.2 *Designer Tools*. Designer Tools and all intellectual property rights therein, including Copyrights, shall be owned solely by Designer. Designer hereby grants to Client a nonexclusive, nontransferable (other than the right to sublicense such uses to Client's publisher, Web hosting or Internet service providers), perpetual, worldwide license to use the Designer Tools solely with the Final Deliverables for the Project. Client may not directly or indirectly, in any form or manner, decompile, reverse engineer, or otherwise disassemble or modify any Designer Tools comprising software or technology.



# **Supplement 2: Interactive-Specific Terms and Conditions**



## **I 1. Support Services**

I 1.1 *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. During the first \_\_\_\_\_ (insert number) months following expiration of this Agreement (“Warranty Period”), if any, Designer shall provide up to \_\_\_\_\_ (insert number) hours of Support Services at no additional cost to Client. Additional time shall be billed at Designer’s regular hourly rate, then in effect upon the date of the request for additional support.

I 1.2 *Maintenance Period.* Upon expiration of the Warranty Period and at Client’s option, Designer will provide Support Services for the following \_\_\_\_\_ (insert number) months (the “Maintenance Period”) for a monthly fee of \$ \_\_\_\_\_ [or Designer’s hourly fees of \$ \_\_\_\_\_ per hour]. The parties may extend the Maintenance Period beyond one year upon mutual written agreement.

## **I 2. Enhancements**

During the Maintenance Period, Client may request that Designer develop enhancements to the Deliverables, and Designer shall exercise commercially reasonable efforts to prioritize Designer’s resources to create such enhancements. The parties understand that preexisting obligations to third parties existing on the date of the request for enhancements may delay the immediate execution of any such requested enhancements. Such enhancements shall be provided on a time and materials basis at Designer’s then-in- effect price for such services.

## **I 3. Additional Warranties and Representations**

I 3.1 *Deficiencies.* Subject to the representations and warranties of Client in connection with Client Content, Designer represents and warrants that the Final Deliverables will be free from Deficiencies. For the purposes of this Agreement, “Deficiency” shall mean a failure to comply with the specifications set forth in the Proposal in any material respect, but shall not include any problems caused by Client Content, modifications, alterations or changes made to Final Deliverables by Client or any third party after delivery by Designer, or the interaction of Final Deliverables with third party applications such as Web browsers other than those specified in the Proposal. The parties acknowledge that Client’s sole remedy and Designer’s sole liability for a breach of this Section is the obligation of Designer to correct any Deficiency identified within the Warranty Period. In the event that a Deficiency is caused by Third Party Materials provided or specified by Designer, Designer’s sole obligation shall be to substitute alternative Third Party Materials.

I 3.2 *Designer Tools*. Subject to the representations and warranties of the Client in connection with the materials supplied by Client, Designer represents and warrants that, to the best of Designer's knowledge, the Designer Tools do not knowingly infringe the rights of any third party, and use of same in connection with the Project will not knowingly violate the rights of any third parties except to the extent that such violations are caused by Client Content, or the modification of, or use of the Deliverables in combination with materials or equipment outside the scope of the applicable specifications, by Client or third parties.

#### **I 4. Compliance with Laws**

Designer shall use commercially reasonable efforts to ensure that all Final Deliverables shall be designed to comply with relevant rules and regulations known to Designer; however, Client, upon acceptance of the Deliverables, shall be solely responsible for conformance with all rules, regulations, and laws relating to Client's use thereof, including without limitation, relating to the transfer of software and technology, and compliance with the Americans with Disabilities Act and Section 508 of the Workforce Investment Act.