



## **Terms & Conditions**

## DEFINITIONS

**Agreement** means the Project Proposal, Terms and Conditions and any other attached documents.

**'Project'** means the scope and purpose of the Client's identified usage of the work product as described in the Project Proposal.

**'Services'** means that all services and the work product to be provided to Client by Designer as described and otherwise further defined in the Project Proposal.

**'Final Deliverables'** means the final versions of Deliverables provided by Designer and accepted by Client.

**'Deliverables'** means the services and work product specified in 'the Project Proposal' to be delivered by Designer to Client.

**'Client Content'** means all materials, writing, images or other creative content provided by Client used in preparing or creating the Deliverables.

**'Third Party Materials'** means any proprietary third party materials that are used in the Final Deliverables, including without limitation stock photography or illustrations.

**'Designer Tools'** means all design tools developed and/or used by Designer in performing the Services, including 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.

## DESIGNER SERVICES

Designer shall perform the services listed the Scope of Work according to the Work Plan.

## PROPOSAL

The terms of this Agreement expires **30** days after being submitted to Client. If this Agreement expires, Designer may modify the Agreement and resubmit it to Client.

## COMPENSATION

**Fees.** Client agrees to pay Designer the fees listed in the Project Proposal, including all taxes. Please note

that fees are billed on a monthly basis rather than a one-time transaction.

**Additional Costs:** The Base Pricing includes website design, website development, hosting fees, performance optimization, global CDN distribution, and general maintenance of the site. Any other optional costs such as: SEO, social media linking, photography services, domain, advertisement integration and setup, custom email address, professional photo editing services, web-store / e-commerce setup, revisions to website design or content, and a customer review section will be billed to Client.

**Hosting Final Deliverables:** Wild Wing Studios will host the website. All hosting costs are included in the monthly fee.

## PAYMENT

**Payment Schedule:** Payment is due monthly, initiated upon signature of agreement.

**Invoices:** All invoices are payable within **30** days of receipt. Invoices shall list any expenses and additional costs as separate items. Our system is setup for monthly payments to be automatically withdrawn monthly.

## LATE PAYMENT

**Late Fee:** A monthly service fee of 1.5 percent or the maximum allowed by law, is payable on all overdue balances.

**Crediting Late Payments:** Payments will be credited to late payments first, and then to unpaid balances.

**Collection Expenses:** Client shall pay all collection or legal fees caused by late payments.

**Withholding Delivery:** Designer may withhold delivery or retract the Website if accounts are not current or overdue invoices are not paid in full. Unpaid balances running over **30 days** will be removed from the public accessibility via the Internet. If the payment is not received within **60 days**, the website will be removed from our servers permanently and will not be recoverable.

## CHANGES TO PROJECT SCOPE

**Change Request:** If Client wants to change the Scope of Work after acceptance of this Agreement, Client shall send Designer a written Change Order describing

the requested changes in detail. Within **5 days** of receiving a Change Order, Designer will respond with a statement proposing designer's availability, additional fees, changes to delivery dates, and any modification to the Terms and Conditions. Designer will evaluate each Change Order at its standard rate and charges.

**Major Change:** If the Client requests a major overhaul of the website such as, but not limited to, total redesigns and new layouts. A quote will be provided to the customer.

**Minor Change:** If Client requests minor changes such as replacement of photographs, content or adding a new page, the client will be billed at \$20.00 per instance. It is recommended that the client submits several changes at once to avoid multiple instances.

**Acceptance/Rejection:** Client will have **7** days to respond in writing accepting or rejecting the new proposal. If Client rejects the proposal, Designer will not be obligated to perform any services beyond those in the original Agreement.

### **DELAYS**

**Designer Delays:** Designer shall use all reasonable efforts to meet the delivery schedule. Designer may extend the due date for any Deliverable by giving written notice to Client. The total of all extensions shall not exceed 30 days.

**Client Delays:** Client shall use all reasonable efforts to provide needed information, materials and approvals. Any delay by Client will result in a day-for-day extension of the due date for all Deliverables.

**General Delays:** Any delay caused by conditions beyond the reasonable control of the parties shall not be considered a breach and will result in a day-for-day extension any performance due. Each party shall use reasonable efforts to notify the other party, in writing, of a delay. Conditions beyond the reasonable control of the parties include, but are not limited to, natural disasters, acts of government after the date of agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war, terrorism and epidemics.

### **WEBSITE BUILDING MATERIALS**

**Client Resources:** The Client will submit all content to the designer, including, but not limited to: written

materials, photographs, previous designs, sprites (functional design elements), and logos within a reasonable amount of time. Website will be designed using the design platform deemed a best fit for the site, allowing the Designer to have full control of website code.

### **EVALUATION AND ACCEPTANCE**

**Testing:** Designer will test and correct Deliverables using commercially reasonable efforts before providing Deliverables to Client.

**Approval Periods:** Client shall, within **7** business days after receiving the Deliverable, notify Designer in writing of any failure to comply with the specification of the Project Proposal or of any other objections, corrections, or changes required. Designer shall, within **7** business days of receiving the Client's notification, correct and submit a revised Deliverable to Client. Client shall, within 48 hours of receiving a revised Deliverable, either approve the corrected version or make further changes. Complex changes, which alter the underlying structure or core logic of the deliverable, are at the discretion of the Designer. If Client fails to provide approval or comments during any approval period, those Deliverables will be considered approved and accepted. All objections, corrections and changes shall be subject to the terms and conditions of this Agreement.

**Alterations:** An initial deliverable will be sent to the Client once the website is in a fully functioning state. The Client can then request to make 5 minor changes free of charge.

### **CLIENT RESPONSIBILITIES**

Client acknowledges that it is responsible for performing the following in a reasonable and timely manner: (a) Provide Client Content in a form suitable for use in the Deliverables without further preparation by Designer, unless otherwise specified in the Project Proposal; (b) Proofread all Deliverables. Client will be charged for correcting errors after the acceptance of any Deliverable; (c) Make decisions regarding other parties.

### **ACCREDITATION AND PROMOTION**

**Accreditation:** Designer shall be entitled to place accreditation, as a hyperlink or otherwise, in the form, size and location as incorporated by Designer in the Deliverables on each page of the Final Deliverables.

**Promotion:** Designer retains the right to reproduce, publish and display the Deliverables in Designer's portfolios and websites, 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.

**Promotional Approval:** Either party, subject to the other's reasonable approval, may describe its role in the Project on its website and in other promotional and marketing materials, and, if not expressly objected to, include a link to the other party's website.

### **CONFIDENTIAL INFORMATION**

Client's "Confidential Information" includes information that Designer should reasonably believe to be confidential. Designer's "Confidential Information" includes the source code of any Designer Tools. All material considered confidential by either party shall be designated as confidential. Confidential Information shall not be disclosed to third parties and shall only be used as needed to perform this Agreement.

Confidential Information shall not include any information that is already known by the recipient, becomes publicly known through no fault of the recipient, or is received from a third party without a restriction on disclosure

### **RELATIONSHIP OF THE PARTIES**

**Independent Contractor:** Designer is an independent contractor. Designer shall determine, in its sole discretion, the manner and means by which the Services are accomplished. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Designer and the work product or Deliverables prepared by Designer shall not be deemed a work for hire as defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

**Design Agents.** Designer shall be allowed to use a third party as independent contractors in connection with the Services ("Design Agents"). Designer shall remain fully responsible for Design Agents' compliance with this Agreement.

**Exclusivity.** This Agreement exclusive relationship between the parties for website design, development,

and hosting. Client is free and welcome to engage others to perform services such as photography, blog writing, content editing, content creation, and the like. Designer shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Designer.

### **REPRESENTATIONS AND WARRANTIES**

**By Client:** Client represents and warrants to Designer that: (a) To the best of Client's knowledge, use of the Client Content does not infringe the rights of any third party; (b) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials; (c) Client will obtain all necessary and appropriate rights and licenses to grant license to Designer to use Third Party Materials, such as photographs.

**By Designer:** Designer represents and warrants to Client that: (a) Designer will provide the Services identified in the Agreement in a professional and workmanlike manner; (b) Designer shall secure all necessary rights, title, and interest in and to the Final Deliverables, including Designer Tools, sufficient for Designer to grant the intellectual property rights provided in this Agreement; (c) To the best of Designer's knowledge, the Deliverables will not violate the rights of any third parties; (d) If Client or third parties modify the Deliverables or use the Deliverables outside of the scope or purpose of this Agreement, all representations and warranties of Designer shall be void.

**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.**

### **INDEMNIFICATION AND LIABILITY**

**By Client:** Client shall indemnify Designer from any and all damages, liabilities, costs, losses, expenses or attorney fees 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. Designer shall promptly notify Client in writing of any third party claim or suit. Client shall have the right to fully control the defense and any settlement of such claim or suit.

**By Designer:** In the case of a third party lawsuit or proceeding based on a claim that Deliverables breached the third party's intellectual property rights, and it is determined that such infringement has occurred, Designer may at its own expense, replace any infringing content with non-infringing content unless content was provided by the client. If this is the case, the client will be responsible for any fees relating to replacing the infringing content.

**By Client:** In the case of a third party lawsuit or proceeding based on a claim that Client Materials breached the third party's intellectual property rights, and it is determined that such infringement has occurred, Client will at their own expense, replace any infringing content with non-infringing content and will be responsible for any legal fees associated with infringement.

**Limitation of Liability.** The services and the work product of designer are sold "as is." in all circumstances, the maximum liability of designer, its directors, officers, employees, design agents and affiliates ("designer parties"), 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 the project 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**

**Term:** This agreement shall begin when both parties sign and shall continue until all Services are completed and delivered, or until the Agreement is Terminated.

**Termination for Cause:** Either party may terminate this agreement at any time, on **30** days prior written notice if the other party breaches any of its material responsibilities or obligations under this Agreement and fails to cure that breach during that **30** day period.

**Termination for Insolvency:** Either party may terminate this agreement at any time, on written notice to the other party, if the other party ceases to conduct

business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it.

**Termination by Mutual Agreement:** This agreement may be terminated by the mutual agreement of the parties.

**Termination for Convenience:** Either party may terminate this agreement at any time and for any reason on **30** days prior written notice to the other party. If Client terminates the Agreement under this section, Designer shall, at Clients reasonable discretion, complete any work assigned or scheduled during the notice period in accordance with the terms and conditions of this Agreement.

**Termination Fees:** In the event of termination, Client shall pay the Designer for the Services performed through the contracted month of termination in the full amount of the fees due. Client shall pay all Expenses, Fees, and Additional Costs incurred through the date of termination and will not be refunded pro-rata.

**Intellectual Property:** If Client terminates, the intellectual property and design created, produced and maintained by Designer will be the property of the Designer. Designer and Client can negotiate a release fee proportional to the work rendered.

**Confidential Information:** On 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) all rights and obligations regarding Confidential Information shall survive.

## **RIGHTS TO FINAL ART**

**License:** Designer grants to Client a non-exclusive, perpetual and worldwide license to use and display the Final Deliverables in accordance with this Agreement. The rights granted to Client are for use of the Final Deliverables in its original form only. Client may not change, create derivative works or extract portions of the Final Deliverables. Designer retains all rights to website code and design elements.

## **RIGHTS TO DELIVERABLES OTHER THAN FINAL ART**

**Client Content:** Client Content is the exclusive property of the Client. Client grants 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.

**Preliminary Works.** Designer retains all rights in and to all Preliminary Works. Client shall return all Preliminary Works to Designer within thirty **30** days of completion of the Services.

**Designer Tools.** All Designer Tools are and shall remain the exclusive property of Designer. Designer grants Client a nonexclusive, nontransferable, perpetual, worldwide license to use the Designer Tools solely to the extent necessary with the Final Deliverables for the Project.

### **SUPPORT SERVICES**

**Warranty Period.** During the first **2** months following the creation of the Final Deliverable, Designer shall provide up to **10** hours of Support Services at no additional cost to Client. Support Services means commercially reasonable technical support and assistance to maintain and update the Deliverables, including correcting any errors or Deficiencies. Requests for additional support will be considered either a major or minor change.

**Maintenance Period.** After the Warranty Period expires and at Client's option, Designer will provide Support Services for the duration of the agreement. Fees are based on whether the change is considered a Major or Minor.

### **ENHANCEMENTS**

During the Maintenance Period, Client may request that Designer develop enhancements to the Deliverables. Designer shall exercise commercially reasonable efforts to prioritize Designer's resources to create such enhancements. Client understands Designer may have preexisting obligations that may delay requested enhancements. Designer shall provide any enhancements at Designer's discretion of either a Major or Minor change and shall be billed as such.

**Alterations.** Alteration of any Deliverable is prohibited without the express permission of Designer. Designer will be given the first opportunity to make the required alterations. Unauthorized alterations shall constitute additional use and will be billed accordingly.

### **GENERAL**

**Modification/Waiver:** Modifications to this Agreement must be in writing and signed by both parties. 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.

**Notices.** All notices under this Agreement shall be given in writing either by: (a) Fax or Email, with return confirmation of receipt; (b) Certified or Registered mail, with return receipt requested. Notice will be effective when received, or in the case of email or fax, on confirmation of receipt.

**No Assignment.** Rights or obligations under this Agreement shall not be transferred, assigned or encumbered without the prior written consent of the other party.

**Governing Law.** This Agreement shall be governed by the law of Washington State.

**Severability:** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Where possible the invalid or unenforceable provision shall be interpreted in such manner as to be effective and valid under applicable law.

**Headings:** Headings and numbering used in this Agreement are for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of this Agreement, and shall not have any legal effect.

**Complete Agreement:** This Agreement is the entire understanding of the parties and supersedes all prior understandings and documents relating to the subject matter of this Agreement