



*the professional association for design*

AIGA Iowa  
P.O. Box 41721  
Des Moines, IA 50311  
[www.aigaiowa.org](http://www.aigaiowa.org)

## **Design Assign 2014**

### **AIGA Standard Form of Agreement for Design Services**

This Agreement for design services is between [Non-profit Organization] and [Designer(s)], for the performance of the services described in the attached proposal provided to Non-profit Organization on [date]. The parties therefore agree as follows:

## **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 and the Proposal document(s).

1.2 *Non-profit Organization Content* means all materials, information, photography, writings and other creative content provided by Non-profit Organization 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(s) to Non-profit Organization, 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 Art* means all creative content developed or created by Designer(s), or commissioned by Designer(s), 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 visual designs, visual elements, graphic design, illustration, photography, animation, sounds, typographic treatments and text, modifications to Non-profit Organization Content, and Designer's selection, arrangement and coordination of such elements together with Non-profit Organization Content and/or Third Party Materials.

1.7 *Final Deliverables* means the final versions of Deliverables provided by Designer(s) and accepted by Non-profit Organization.

1.8 *Preliminary Works* means all artwork 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 Non-profit Organization for consideration but do not form part of the Final Art.

1.9 *Project* means the scope and purpose of the Non-profit Organization'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 Non-profit Organization by Designer(s) 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 Non-profit Organization.

## **2. PROPOSAL**

The terms of the Proposal shall be effective for 180 days after presentation to Non-profit Organization. In the event this Agreement is not executed by Non-profit Organization 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(s) and nature of the Design Assign 2014 program, the Non-profit Organization shall pay to Designer(s) no fees.

3.2 *Expenses*. Non-profit Organization shall pay no expenses incurred by the Designer(s) without prior approval of Non-profit Organization in writing.

3.3 *Additional Costs*. Non-profit Organization shall pay no expenses incurred by the Designer(s) without prior approval of Non-profit Organization in writing.

## **4. CHANGES**

4.1 *General Changes*. Unless otherwise provided in the Proposal, and except as otherwise provided for herein, Non-profit Organization shall pay additional charges for changes requested by Non-profit Organization which are outside the scope of the Services on a time and materials basis, at a rate negotiated with the Designer(s) outside the realm of AIGA Iowa Design Assign program.

4.2 *Substantive Changes*. If Non-profit Organization requests or instructs Changes that amount to a revision of at least 25% of the time required to produce the Deliverables, and or the value or scope of the Services, Designer(s) shall be entitled to submit a new and separate Proposal to Non-profit Organization 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(s) 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. Non-profit Organization 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 and/or corrections sufficient to identify the Non-profit Organization's concerns, objections or corrections to Designer(s). The Designer(s) shall be entitled to request written clarification of any concern, objection or correction. Non-profit Organization acknowledges and agrees that Designer's ability to meet any and all schedules is entirely dependent upon Non-profit Organization's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the Proposal and that any delays in Non-profit Organization's performance or Changes in the Services or Deliverables requested by Non-profit Organization may delay delivery of the Deliverables. Any such delay caused by Non-profit Organization shall not constitute a breach of any term, condition or Designer's obligations under this Agreement.

4.4 *Testing and Acceptance*. Designer(s) will exercise commercially reasonable efforts to test Deliverables requiring testing and to make all necessary corrections prior to providing Deliverables to Non-profit Organization. Non-profit Organization, within 14 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 Non-profit Organization 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 Non-profit Organization, the Deliverable shall be deemed accepted.

## **5. NON-PROFIT ORGANIZATION RESPONSIBILITIES**

Non-profit Organization 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(s);
- (b) provision of Non-profit Organization Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal; and
- (c) final proofreading and in the event that Non-profit Organization has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product, Non-profit Organization shall incur the cost of correcting such errors.

## **6. ACCREDITATION/PROMOTIONS**

All displays or publications of the Deliverables shall bear accreditation and/or copyright notice in Designer's name in the form, size and location as incorporated by Designer(s) in the Deliverables, or as otherwise directed by Designer(s). Designer(s) retains the right to reproduce, publish and display the Deliverables 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 promotional 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, 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.

## **8. RELATIONSHIP OF THE PARTIES**

**8.1 Independent Contractor.** Designer(s) is an independent contractor, not an employee of Non-profit Organization or AIGA Iowa or any company affiliated with Non-profit Organization or AIGA Iowa. Designer(s) shall provide the Services under the general direction of Non-profit Organization, 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. Designer(s) and the work product or Deliverables prepared by Designer(s) shall not be deemed a work for hire as that term is defined under Copyright Law. All rights, if any, granted to Non-profit Organization 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 *Designer Agents.* Designer(s) 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”). Notwithstanding, Designer(s) shall remain fully responsible for such Design Agents’ compliance with the various terms and conditions of this Agreement.

8.3 *No Exclusivity.* The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Non-profit Organization is free to engage others to perform services of the same or similar nature to those provided by Designer(s), and Designer(s) shall be entitled to offer and provide design services to others, solicit other Non-profit Organizations and otherwise advertise the services offered by Designer(s).

## 9. WARRANTIES AND REPRESENTATIONS

9.1 *By Non-profit Organization.* Non-profit Organization represents, warrants and covenants to Designer(s) that

(a) Non-profit Organization owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Non-profit Organization Content,

(b) to the best of Non-profit Organization’s knowledge, the Non-profit Organization Content does not infringe the rights of any third party, and use of the Non-profit Organization Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties,

(c) Non-profit Organization shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and

(d) Non-profit Organization shall comply with all laws and regulations as they relate to the Services and Deliverables.

9.2 *By Designer(s)*

(a) Designer(s) hereby represents, warrants and covenants to Non-profit Organization that Designer will provide the Services identified in the Agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.

(b) Designer(s) further represents, warrants and covenants to Non-profit Organization that (i) except for Third Party Materials and Non-profit Organization Content, the Final Deliverables shall be the original work of Designer(s) and/or its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by Designer(s), Designer(s) shall have secure agreements from such contractors granting all necessary rights, title, and interest in and to the Final Deliverables sufficient for Designer(s) to grant the intellectual property rights provided in this Agreement, and (iii) to the best of Designer’s knowledge, the Final Art provided by Designer(s) and Designer’s subcontractors does not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties. In the event Non-profit Organization or third parties modify or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Proposal or this Agreement or contrary to the terms and conditions noted herein, all representations and warranties of Designer(s) 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 Non-profit Organization.* Non-profit Organization agrees to indemnify, save and hold harmless Designer(s) and AIGA Iowa 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 Non-profit Organization’s responsibilities

or obligations, representations or warranties under this Agreement. Under such circumstances Designer(s) shall promptly notify Non-profit Organization in writing of any claim or suit;

(a) Non-profit Organization has sole control of the defense and all related settlement negotiations; and

(b) Designer(s) provides Non-profit Organization with commercially reasonable assistance, information and authority necessary to perform Non-profit Organization's obligations under this section. Non-profit Organization will reimburse the reasonable out-of-pocket expenses incurred by Designer(s) in providing such assistance.

10.2 By Designer(s). Subject to the terms, conditions, express representations and warranties provided in this Agreement, Designer(s) agrees to indemnify, save and hold harmless Non-profit Organization and AIGA Iowa from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with Designer's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of Non-profit Organization provided that

(a) Non-profit Organization promptly notifies Designer(s) in writing of the claim;

(b) Designer(s) shall have sole control of the defense and all related settlement negotiations; and

(c) Non-profit Organization shall provide Designer(s) 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 Non-profit Organization for any claim or adverse finding of fact arising out of or due to Non-profit Organization Content, any unauthorized content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Designer(s).

10.3 *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 Non-profit Organization for damages for any and all causes whatsoever, and Non-profit Organization'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(s) or AIGA Iowa 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 This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered.

11.2 This Agreement may be terminated at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or 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 30 days from receipt of written notice of such breach.

11.3 In the event of termination, Designer(s) 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(s) or Designer's agents as of the date of termination, whichever is greater; and Non-profit Organization shall pay all Expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation.

11.4 In the event of termination by Non-profit Organization and upon full payment of compensation as provided herein, Designer(s) grants to Non-profit Organization such right and title as provided for in Schedule A



of this Agreement with respect to those Deliverables provided to, and accepted by Non-profit Organization 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.

## **12. GENERAL**

12.1 *Modification/Waiver.* This Agreement may be modified by the parties. Any modification of this Agreement must be in writing, except that Designer's invoices may include, and Non-profit Organization shall pay, expenses or costs that Non-profit Organization authorizes by electronic mail in cases of extreme time sensitivity. 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 either by facsimile or electronic mail with return confirmation of receipt or by certified or registered mail, return receipt requested, and shall be sent 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 fax or email, upon confirmation of receipt.

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.

12.4 *Force Majeure.* Designer(s) shall not be deemed in breach of this Agreement if Designer(s) is unable to complete the Services or any portion thereof by reason of fire, earthquake, labor dispute, act of God or public enemy, death, illness or incapacity of Designer(s) 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(s) shall give notice to Non-profit Organization 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 Iowa 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 Name of State. The parties hereby waive any jurisdictional or venue defenses available to them and further consent to service of process by mail. Non-profit Organization acknowledges that Designer(s) will have no adequate remedy at law in the event Non-profit Organization 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 *Headings.* The numbering and captions of the various sections are solely for convenience and reference

only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect.

**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 below, and .

By their execution, the parties hereto have agreed to all of the terms and conditions of this Agreement effective as of the last date of signature, 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.

## **Schedule A: Intellectual Property Provisions**

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

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

**1.2 Third Party Materials.** All Third Party Materials are the exclusive property of their respective owners. Designer(s) shall inform Non-profit Organization of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Final Art. Under such circumstances Designer(s) shall inform Non-profit Organization of any need to license, at Non-profit Organization's expense, and unless otherwise provided for by Non-profit Organization, Non-profit Organization shall obtain the license(s) necessary to permit Non-profit Organization's use of the Third Party Materials consistent with the usage rights granted herein. In the event Non-profit Organization fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of Third Party Materials, Non-profit Organization 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 a third party arising out of Non-profit Organization's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Final Art.

**1.3 Preliminary Works.** Designer(s) retains all rights in and to all Preliminary Works. Non-profit Organization shall return all Preliminary Works to Designer(s) within days of completion of the Services and all rights in and to any Preliminary Works shall remain the exclusive property of Designer(s).

**1.4 Original Artwork.** Designer(s) retains all right and title in and to any original artwork comprising Final Art, including all rights to display or sell such artwork. Non-profit Organization shall return all original artwork to Designer(s) within 30 days of completion of the Services.

**1.5 Trademarks.** Upon completion of the Services and expressly conditioned upon full payment of all fees, costs and out-of-pocket expenses due, Designer(s) assigns to Non-profit Organization all ownership rights, including any copyrights, in and to any artworks or designs comprising the works created by Designer for use by Non-profit Organization as a Trademark. Designer(s) shall cooperate with Non-profit Organization and shall execute any additional documents reasonably requested by Non-profit Organization to evidence such assignment. Non-profit Organization shall have sole responsibility for ensuring that any proposed trademarks or Final 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. Non-profit Organization hereby indemnifies, saves and

holds harmless Designer(s) or AIGA Iowa 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 Non-profit Organization's use and/or failure to obtain rights to use or use of the Trademark.

**1.6 Designer Tools.** All Designer Tools are and shall remain the exclusive property of Designer(s). Designer(s) hereby grants to Non-profit Organization a nonexclusive, nontransferable (other than the right to sublicense such uses to Non-profit Organization'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. Non-profit Organization 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(s).

## **2. RIGHTS TO FINAL ART**

**2.1 Exclusive license, no modification rights:** For print AND/OR online/interactive AND/OR three-dimensional media: Designer(s) hereby grants to Non-profit Organization or AIGA Iowa the exclusive, perpetual and worldwide right and license to use, reproduce and display the Final Art solely in connection with the Project as defined in the Proposal and in accordance with the various terms and conditions of this Agreement. The rights granted to Non-profit Organization are for usage of the Final Art in its original form only. Non-profit Organization may not crop, distort, manipulate, reconfigure, mimic, animate, create derivative works or extract portions or in any other manner, alter the Final Art.

### **Supplement 1: Print-specific Terms and Conditions**

**1. Samples.** Non-profit Organization shall provide Designer(s) with a number of samples, at their discretion, of each printed or published form of the Final Deliverables, for use in Designer's portfolio and other self-promotional uses. Such samples shall be representative of the highest quality of the work produced.

**2. Finished Work.** The printed work, and the arrangement or brokering of the print services by Designer(s), shall be deemed in compliance with this Agreement if the final printed product is within the acceptable variations as to kind, quantity, and price in accordance with current or standard trade practices identified by the supplier of the print and print-related services. Whenever commercially reasonable and if available, Designer(s) shall provide copies of the current or standard trade practices to Non-profit Organization. Notwithstanding, Designer(s) shall have no responsibility or obligation to negotiate changes or amendments to the current or standard trade practices.

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

#### **1. SUPPORT SERVICES**

**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 six (6) months following expiration of this Agreement ("Warranty Period"), if any, Designer(s) shall provide up to three (3) hours of Support Services at no additional cost to Non-profit Organization. Additional time shall be billed at Designer's regular hourly rate, then in effect upon the date of the request for additional support.

**1.2 Maintenance Period.** Upon expiration of the Warranty Period and at Non-profit Organization's option, Designer(s) will provide Support Services for the following 18 months (the "Maintenance Period") for the Designer's hourly fee. The parties may extend the Maintenance Period beyond one year upon mutual written agreement.

#### **2. ENHANCEMENTS**



During the Maintenance Period, Non-profit Organization may request that Designer(s) develop enhancements to the Deliverables, and Designer(s) 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.

### **3. ADDITIONAL WARRANTIES AND REPRESENTATIONS**

**3.1 Deficiencies.** Subject to the representations and warranties of Non-profit Organization in connection with Non-profit Organization Content, Designer(s) 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 Non-profit Organization Content, modifications, alterations or changes made to Final Deliverables by Non-profit Organization 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 Non-profit Organization's sole remedy and Designer's sole liability for a breach of this Section is the obligation of Designer(s) 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, Designers sole obligation shall be to substitute alternative Third Party Materials.

**3.2 Designer Tools.** Subject to the representations and warranties of the Non-profit Organization in connection with the materials supplied by Non-profit Organization, Designer(s) 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 Non-profit Organization Content, or the modification of, or use of the Deliverables in combination with materials or equipment outside the scope of the applicable specifications, by Non-profit Organization or third parties.

### **4. COMPLIANCE WITH LAWS**

Designer(s) shall use commercially reasonable efforts to ensure that all Final Deliverables shall be designed to comply with the known relevant rules and regulations. Non-profit Organization, upon acceptance of the Deliverables, shall be responsible for conformance with all laws relating to the transfer of software and technology.

## **Supplement 3: Environmental-specific Terms and Conditions**

### **1. PHOTOGRAPHS OF THE PROJECT**

Designer(s) shall have the right to document, photograph or otherwise record all completed designs or installations of the Project, and to reproduce, publish and display such documentation, photographs or records for Designer's promotional purposes in accordance with Section 6 of the Basic Terms and Conditions of this Agreement.

### **2. ADDITIONAL Non-profit Organization RESPONSIBILITIES**

Non-profit Organization acknowledges that Non-profit Organization shall be responsible for performing the following in a reasonable and timely manner:

- (a) Communication of administrative or operational decisions if they affect the design or production of Deliverables, and coordination of required public approvals and meetings;
- (b) Provision of accurate and complete information and materials requested by Designer(s) such as, by way of example, not limitation, site plans, building plans and elevations, utility locations, color/material samples and

all applicable codes, rules and regulation information;

(c) Provision of approved naming, nomenclature; securing approvals and correct copy from third parties such as, by way of example, not limitation, end users or donors as may be necessary;

(d) Final proofreading and written approval of all project documents including, by way of example, not limitation, artwork, message schedules, sign location plans and design drawings before their release for fabrication or installation. In the event that Non-profit Organization has approved work containing errors or omissions, such as, by way of example, not limitation, typographic errors or misspellings, Non-profit Organization shall incur the cost of correcting such errors;

(e) Arranging for the documentation, permissions, licensing and implementation of all electrical, structural or mechanical elements needed to support, house or power signage; coordination of sign manufacture and installation with other trades; and

(f) Bid solicitation and contract negotiation; sourcing, establishment of final pricing and contract terms directly with fabricators or vendors.

### **3. ENGINEERING**

The Services shall include the selection and specifications for materials and construction details as described in the Proposal. However, Non-profit Organization acknowledges and agrees [that Designer(s) is not a licensed engineer or architect, and] that responsibility for the interpretation of design drawings and] the design and engineering of all work performed under this Agreement ("Engineering") is the sole responsibility of Non-profit Organization and/or its architect, engineer or fabricator.

### **4. IMPLEMENTATION**

Non-profit Organization expressly acknowledges and agrees that the estimates provided in the Proposal, at any time during the project for implementation charges such as, including, but not limited to, fabrication or installation are for planning purposes only. Such estimates represent the best judgment of Designer(s) or its consultants at the time of the Proposal, but shall not be considered a representation or guarantee that project bids or costs will not vary. Non-profit Organization shall contract and pay those parties directly responsible for implementation services such as fabrication or installation ("Implementation"). Designer(s) shall not be responsible for the quality or timeliness of the third-party Implementation services, irrespective of whether Designer(s) assists or advises Non-profit Organization in evaluating, selecting or monitoring the provider of such services.

### **5. COMPLIANCE WITH LAWS**

Designer(s) shall use commercially reasonable efforts to ensure that all Final Deliverables shall be designed to comply with the applicable rules and regulations such as the Americans with Disabilities Act ("ADA"). However, Designer(s) is not an expert and makes no representations or warranties in connection with compliance with such rules, codes or regulations. The compliance of the Final Deliverables with any such rule, codes or regulations shall be the responsibility of Non-profit Organization. Designer(s) shall use commercially reasonable efforts to ensure the suitability and conformance of the Final Deliverables.