

RT WEB DESIGNS CLIENT AGREEMENT

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 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 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.

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

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 7 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 five percent (5%), and, if applicable, a mileage reimbursement at \$0.50 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.* All invoices are payable within (14) days of receipt. A monthly service charge of 1.5 percent (or the greatest amount allowed by state law) is payable on all overdue balances. Payments will be credited first to late payment charges and next to the unpaid balance. Client shall be responsible for all collection or legal fees necessitated by lateness or default in payment. Designer reserves the right to withhold delivery and any transfer of ownership of any current work 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 which shall be inclusive of any and all outstanding Additional Costs, Taxes, Expenses, and Fees, Charges, or the costs 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 \$50 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 twenty five percent (25%) 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 and/or corrections sufficient to identify the Client's concerns, objections or corrections to Designer. The Designer shall be entitled to request written clarification of any concern, objection or correction. Client acknowledges and agrees that Designer's ability to meet any and all 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 any term, condition or Designer's obligations under this Agreement.

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.

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. 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 in the Deliverables, or as otherwise directed by Designer. Designer 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 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 *Designer Agents.* Designer shall be permitted to engage and/or use third party designers or other service providers as independent contractors in connection with the Services ("Design Agents"). Notwithstanding, 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 Designer, 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 identified in the Agreement 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 its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by Designer, Designer shall have secure agreements from such contractors 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 provided by Designer 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 Client 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 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.* Subject to the terms, conditions, express representations and warranties provided in this Agreement, Designer agrees to indemnify, save and hold harmless Client 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 Client 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 or adverse finding of fact arising out of or due to Client Content, any unauthorized content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Designer.

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 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 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.

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 or Designer's agents as of the date of termination, whichever is greater; and Client shall pay all Expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation. 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 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.

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 Client shall pay, expenses or costs that Client 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 (by automated confirmation or substantive 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 Maryland 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 Maryland. 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 *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. Any other ambiguities shall be resolved with the most reasonable and legally valid construction, without regard to authorship of such provisions. 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:

RT Web Designs LLC
5443 Wooded Way,
Columbia, MD 21044

Signed: _____

Date: _____

CLIENT:

[Client name]
[Address]

Signed: _____

By: [Client officer name]

Title: _____

Date: _____

Schedule A: Intellectual Property Provisions

Option 1: License for Limited Usage

IP 1. RIGHTS IN THE FINAL DELIVERABLES

- IP 1.1 *Final Works*. Upon completion of the Services, and expressly conditioned upon full payment of all fees and costs due, Designer grants to Client *limited usage rights* in the Final Works as set forth below. Any additional uses will require separate pricing. All other rights, including Copyrights, are reserved by Designer.

Category of use: _____

Medium of use: _____

Duration of use: _____

Geographic territory: _____

Initial press run: _____

Exclusivity: For the Duration of Use, Client shall have (check one)

☐ Exclusive

OR

☐ Nonexclusive rights as set forth above.

Modification: (check one)

☐ The rights granted to Client are for usage of the Final Works in their original form only. Client may not crop, distort, manipulate, reconfigure, mimic, animate, edit, extract portions, intentionally alter the color of the Final Works, or otherwise create derivative works based on the Final Works.

OR

☐ The rights granted to Client include the rights to adapt, modify

and create derivative works based on the Final Works solely in connection with the Project and usage rights set forth herein.

- IP 1.2 *Trademarks.* Upon completion of the Services, and expressly conditioned upon full payment of all fees and costs due, Designer assigns to Client all of Designer's rights, including trademark and Copyright, in and to Trademarks created by Designer. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment. Client shall have sole responsibility for ensuring that 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 Content, including pre-existing Trademarks, shall remain the sole property of Client or its respective suppliers, and Client or its suppliers shall be the sole owner of all trademark, trade secrets, patents, Copyrights, and other rights in connection therewith. Client hereby grants to Designer a non-exclusive, 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 1.4 *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. RIGHTS RESERVED TO DESIGNER

- IP 2.1 *Preliminary Works/Working Files.* Designer retains all proprietary rights, including property ownership, intellectual property rights and Copyrights, in and to all Preliminary Works and Working Files, and Client shall return to Designer all Preliminary Works and Working Files in Client's possession within thirty (30) days of completion of the Services.
- IP 2.2 *Original Artwork.* Designer retains property ownership in any original artwork comprising Final Works, including all rights to display or sell such artwork. Client shall return all original artwork to Designer within thirty (30) days of completion of the Services.
- IP 2.3 *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.

IP 3. LIQUIDATION RIGHTS

- IP 3.1 *Liquidation for Unlicensed Use.* Client's use of the Deliverables shall be limited to the usage rights granted herein for the Project only. In the event Client, or its agents, uses Final Works or other Deliverables, including Preliminary Works and Working Files, or any derivative works thereof, for another project or outside the scope of the rights granted herein, Designer shall be entitled to further compensation equal to _____ percent (____%) of the original Project fee unless otherwise agreed in writing by both parties.

Schedule A: Intellectual Property Provisions

Option 2: Exclusive License

IP 1. RIGHTS IN THE FINAL DELIVERABLES

- IP 1.1 *Final Works.* Upon completion of the Services, and expressly conditioned upon full payment of all fees and costs due, Designer hereby grants to Client the exclusive, perpetual and worldwide right and license to use, reproduce and display the Final Works solely in connection with the Project as defined in the Proposal. Any additional uses will require separate pricing. All other rights, including Copyrights, are reserved by Designer.

Modification: (check one)

☐ The rights granted to Client are for usage of the Final Works in their original form only. Client may not crop, distort, manipulate, reconfigure, mimic, animate, edit, extract portions, intentionally alter the color of the Final Works, or otherwise create derivative works based on the Final Works.

OR

☐ The rights granted to Client include the rights to adapt, modify and create derivative works based on the Final Works solely in connection with the Project and usage rights set forth herein.

- IP 1.2 *Trademarks.* Upon completion of the Services, and expressly conditioned upon full payment of all fees and costs due, Designer assigns to Client all of Designer's rights, including trademark and Copyright, in and to Trademarks created by Designer. Designer shall cooperate with Client and shall execute any additional

documents reasonably requested by Client to evidence such assignment. Client shall have sole responsibility for ensuring that 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 Content, including pre-existing Trademarks, shall remain the sole property of Client or its respective suppliers, and Client or its suppliers shall be the sole owner of all trademark, trade secrets, patents, Copyrights, and other rights in connection therewith. Client hereby grants to Designer a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the Client Content solely in connection with Designer's performance of the Services and promotional uses of the Deliverables as authorized in this Agreement.

IP 1.4 *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. RIGHTS RESERVED TO DESIGNER

IP 2.1 *Preliminary Works/Working Files.* Designer retains all proprietary rights, including property ownership, intellectual property rights and Copyrights, in and to all Preliminary Works and Working Files, and Client shall return to Designer all Preliminary Works and Working Files in Client's possession within thirty (30) days of completion of the Services.

- IP 2.2 *Original Artwork.* Designer retains property ownership in any original artwork comprising Final Works, including all rights to display or sell such artwork. Client shall return all original artwork to Designer within thirty (30) days of completion of the Services.
- IP 2.3 *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.

IP 3. LIQUIDATION RIGHTS

- IP 3.1 *Liquidation for Unlicensed Use.* Client's use of the Deliverables shall be limited to the usage rights granted herein for the Project only. In the event Client, or its agents, uses Final Works or other Deliverables, including Preliminary Works and Working Files, or any derivative works thereof, for another project or outside the scope of the rights granted herein, Designer shall be entitled to further compensation equal to _____ percent (____%) of the original Project fee unless otherwise agreed in writing by both parties.

Schedule A: Intellectual Property Provisions

Option 3: Assignment of Rights

IP 1. RIGHTS IN THE FINAL DELIVERABLES

- IP 1.1 *Final Works.* Upon completion of the Services, and expressly conditioned upon full payment of all fees and costs due, Designer *assigns* to Client all of Designer's Copyrights in and to the Final Works, including Trademarks, and Designer shall deliver to Client all Working Files related to the Final Works. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment, 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 Content, including pre-existing Trademarks, shall remain the sole property of Client or its respective suppliers, and Client or its suppliers shall be the sole owner of all trademark, trade secrets, patents, Copyrights, and other rights in connection therewith. Client hereby grants to Designer a nonexclusive, nontransferable license to use, reproduce, modify, dis-

play 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 1.4 *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. RIGHTS RESERVED TO DESIGNER

- IP 2.1 *Preliminary Works/Working Files.* Designer retains all proprietary rights, including property ownership, intellectual property rights and Copyrights, in and to all Preliminary Works and Working Files, and Client shall return to Designer all Preliminary Works and Working Files in Client's possession within thirty (30) days of completion of the Services.
- IP 2.2 *Original Artwork.* Designer retains property ownership in any original artwork comprising Final Works, including all rights to display or sell such artwork. Client shall return all original artwork to Designer within thirty (30) days of completion of the Services.
- IP 2.3 *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.

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.* Upon completion of the Services, and expressly conditioned upon full payment of all fees and costs due, Designer assigns to Client all of Designer's rights, including trademark and Copyright, in and to Trademarks created by Designer. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment. Client shall have sole responsibility for ensuring that 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 Content, including pre-existing Trademarks, shall remain the sole property of Client or its respective suppliers, and Client or its suppliers shall be the sole owner of all trademark, trade secrets, patents, Copyrights, and other rights in connection therewith. Client hereby grants to Designer a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the Client Content solely in connection with Designer's performance of the Services and 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 1: Print-Specific Terms and Conditions

- P 1. *Samples.* Client shall provide Designer with ____ (number) of samples 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.
- P 2. *Finished Work.* The printed work, and the arrangement or brokering of the print services by Designer, 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 shall provide copies of the current or standard trade practices to Client. Notwithstanding, Designer 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

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.

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, Designers 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.

Supplement 3:

Environmental-Specific Terms and Conditions

3D 1. PHOTOGRAPHS OF THE PROJECT

Designer 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.

3D 2. ADDITIONAL CLIENT RESPONSIBILITIES

Client acknowledges that Client 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 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 Client has approved work containing errors or omissions, such as, by way of example, not limitation, typographic errors or misspellings, Client 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.

3D 3. ENGINEERING

The Services shall include the selection and specifications for materials and construction details as described in the Proposal. However, Client acknowledges and agrees [that Designer 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 Client and/or its architect, engineer or fabricator.

3D 4. IMPLEMENTATION

Client 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 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. Client shall contract and pay those parties directly responsible for implementation services such as fabrication or installation ("Implementation"). Designer shall not be responsible for the quality or timeliness of the third-party Implementation services, irrespective of whether Designer assists or advises Client in evaluating, selecting or monitoring the provider of such services.

3D 5. COMPLIANCE WITH LAWS

Designer 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 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 Client. Designer shall use commercially reasonable efforts to ensure the suitability and conformance of the Final Deliverables.

3D 6. CLIENT INSURANCE

Client shall maintain, during the term of this Agreement, at its sole expense, construction and maintenance liability, product liability, general business liability and advertising injury insurance from a recognized insurance carrier in the amount of at least _____ million dollars (\$____,000,000.00) per occurrence. Such insurance shall name Designer individually as an additional named insured. Client shall provide a copy of said insurance policy to Designer at Designer's request.

Supplement 4: Motion-Specific Terms and Conditions

M 1. ADDITIONAL WARRANTIES AND REPRESENTATIONS

M 1.1 *Warranty of Compliance.* Designer represents, warrants and covenants that the deliverables will comply with Client's technical requirements and applicable industry standards for final output, such as duration, file format, resolution, and color specifications.

M 1.2 *Standard of Care.* Designer represents, warrants and covenants that the Deliverables shall be artistically produced with direction, photography, sound, art, animation, synchronization and other physical and aesthetic content of a technical quality equal to current standards for multimedia development services of similar character and purpose.

M 2. NON-UNION LABOR

Designer is not a signatory to any union or guild agreement. Designer acknowledges that this Agreement is not subject to any collective bargaining agreements.

M 3. NO LIVE ACTION

Client acknowledges that no new live-action footage will be produced by Designer, whether in studio or on location.

M 4. SCREEN CREDITS

For film and television projects, Client is responsible for approving the content and placement of all screen credits and assuring their compliance with any applicable union or guild requirements.

M 5. PRODUCTION INSURANCE

Designer carries standard business insurance only. No additional production insurance will be provided by the Designer for this Project.

M 6. DEFECTS IN CLIENT CONTENT

Designer is not responsible for any defects or problems with components provided to Designer by Client, including but not limited to:

- (a) Production footage, including physical effects (such as models, puppets, prosthetics, et cetera) and/or mechanical effects (also known as "special effects," such as rain, wind, crashes, explosions, et cetera);
- (b) Visual effects (such as animations, matte shots, computer-generated images, et cetera); and
- (c) Designer is not responsible for any federal, state or local licenses, certifications, insurance, union or guild requirements related to any components provided by Client.

M 7. TRADE SECRETS

- M 7.1 *Definition.* Each Party's "Trade Secrets" shall mean a Party's proprietary property, including information, ideas, patterns, compilations, data, lists, documents, memoranda, processes, programs, devices, methods, techniques, formulas or improvements, whether or not patentable, which meets the following criteria:
- (a) the other Party becomes aware of the property as a consequence of performing its obligations under this Agreement;
 - (b) the property has independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and
 - (c) the Party has made reasonable efforts under the circumstances to maintain the secrecy of the property. Each

Party acknowledges that the other Party's Trade Secrets are Confidential Information subject to the Confidentiality provisions of this Agreement.

- M 7.2 *Client's Trade Secrets.* Client's Trade Secrets include, by way of illustration but without limitation:
- (a) Client's customer and vendor information, including, but not limited to, identity, contacts, decision makers, financial and legal dealings;
 - (b) customer files, records, or images from any Client project (whether on film, paper, digital or other media); and
 - (c) third-party materials entrusted to Client as confidential, such as scripts, story boards, story ideas, identity of actors, and identity of technical resources involved in Client projects or potential projects;
 - (d) Clients' business plans, business opportunities, business partners, contracts, negotiations, personnel, finances, legal matters, research, development, information systems, product and software concepts.

- M 7.3 *Designer's Trade Secrets.* Designer's Trade Secrets shall include, by way of illustration but without limitation:
- (a) Designer Tools;
 - (b) Designer's customer and vendor information, including, but not limited to, identity, contacts, decision makers, financial and legal dealings;
 - (c) Designer's business plans, business opportunities, business partners, contracts, negotiations, personnel, finances, legal matters, research, development, information systems, product and software concepts.

M 8. KILL FEE

Client acknowledges and agrees that Designer has reserved availability of Designer and/or Designer's employees and/or sub contractors (collectively "Designer's personnel") to work on each Proposal for the projected time required for the Services, and that by reserving such availability, Designer's personnel necessarily forgo opportunities to work on other projects for other clients. Accordingly, Client agrees that, in the event a Project is canceled for any reason other than a material breach by Designer, Client agrees that it would be impracticable and extremely difficult to calculate the actual damages resulting from such lost opportunities, and Client agrees to pay to Designer

a kill fee in the amount of \$ _____, which Client agrees represents reasonable compensation for such lost opportunities. This provision replaces and supersedes Section 11.3, except with respect to termination for a material breach by Designer as set forth in Section 11.2(b), of the Basic Terms and Conditions of this Agreement.

M 9. CONTENT RESTRICTIONS

Client understands and agrees that Designer will not perform or be asked to perform Services with respect to content comprising adult entertainment, gambling, violence, sexuality, nudity, politics, religion, vulgarity, obscenity, or alcohol or substance abuse.

OR

M 9 MATURE CONTENT

M 9.1 Designer understands that explicit and graphic expressions, including depictions of or language relating to violence, sexuality, nudity, politics, religion, vulgarity and obscenity, substance abuse, or other such content which some segments of the populace may find offensive (collectively "Mature Content"), are inherent to the nature of the creative process in Client's entertainment business. Designer waives any claim Designer may have against the Client, its officers, directors, shareholders and employees, affiliates and successors-in-interest, based upon, arising from or related to the Designer's exposure to, or performing Services on, any such Mature Content.

M 9.2 Designer's employees or subcontractors must be 18 years of age or older.