

Month, Day 2021

Client Name
Project Contact
Address

I've attached a Terms and Conditions Agreement for design and consulting that covers all work Drawing on the Promises LLC will do for [BUSINESS NAME] unless specifically noted in the Statement of Work.

If you can please review the Terms and Conditions, ask any questions and return a signed (page 10) hardcopy, then we'll be set for current and future projects. I hope that this will clear up any questions you may have regarding rights and usage.

As always, please contact me if you have issues or concerns.

Warm Regards,

Frank McClung

Frank McClung Advisory: a part of -
Drawing on the Promises LLC
23 Point Road, Crossville, TN 38571
Phone: 931.484.1171
Email | frank@drawingonthepromises.com
www.DrawingonthePromises.com

Attached:

1. Basic Terms and Conditions
2. Schedule A
3. Supplement 1 & 3

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 project estimate (referred to herein as 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, 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 Web site design, architecture, layout, navigational and functional elements.

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

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

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 Client for consideration but do not form part of the Final Art. All artwork that is not accepted and incorporated into Final Art will be considered Preliminary 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.

2. PROPOSAL.

The terms of the Proposal shall be effective for 15 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, Estimate or Invoice, 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 with the Client’s prior approval and as documented with proper receipts: (a) incidental and out-of-pocket expenses including but not limited to costs for postage, shipping, overnight courier, service bureaus, typesetting, blueprints, models, presentation materials, photocopies, computer expenses, parking fees and tolls, and taxis at cost, and, if applicable, a mileage reimbursement at 50 cents per mile; and (b) travel expenses including transportation, meals, and lodging-- incurred by Designer and must have the 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, illustration, copy writing, printing costs, prototype production costs, talent fees, music licenses, and online access or website hosting fees, will be billed to and pre-approved by Client unless specifically otherwise provided for in the Proposal. All additional costs must have the Client's prior approval before those costs are incurred by the Designer.

3.4 *Invoices.* All undisputed invoices are payable within 15 days upon receipt unless otherwise noted on the invoice. Past due, undisputed invoices will accrue interest of 1.5% of the outstanding balance (or at the maximum rate of interest allowed by law) on all overdue balances past due more than 5 business days. Payments will be credited first to interest charges and next to the unpaid balance. Client shall be responsible for all collection or legal fees necessitated by late or default in payment by Client on undisputed invoices. Designer reserves the right to withhold delivery and any transfer of ownership of any current work if overdue undisputed 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, all of which are undisputed.

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 \$95.00 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 reasonably extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes. All additional costs for Client requested changes will be made known to the Client for approval prior to those changes being made.

4.2 *Substantive Changes.* If Client requests or instructs Changes that amount to a major revision in 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 best 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.

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, unless otherwise agreed upon by both Client and Designer, 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 reasonable 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; and
- (c) final proofreading and in the event that Client has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product, Client shall incur the cost of correcting such errors.

6. ACCREDITATION/PROMOTIONS. On a case-by-case basis and only as set forth in a Proposal, certain pre-approved 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. Upon receipt of Client's written consent, Designer may reproduce, publish and display the Deliverables in Designer's portfolios and Web sites, 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, such consent shall not be unreasonably withheld. Upon receipt of the written consent of a party, the other 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 Web site and in other promotional materials, and, if not expressly objected to, include a link to the other party's Web site.

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. Designer and the work product or Deliverables prepared by Designer shall not be deemed a work for hire as that term is defined under Copyright Law; provided, however, Client has full access and control of the Final Deliverables to modify, display, and use according to the purpose specified in the estimate/proposal as it deems necessary when such Final Deliverables are a custom designed for Client such as a logo, name, business cards, stationary, and the like. 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 who has been assigned to perform tasks under this Agreement.

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 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 Client’s duties in regards to the Services and Deliverables. CLIENT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, NOT SPECIFICALLY STATED HEREIN.

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 provided by Client 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 Art 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 to the extent the modification triggers an intellectual property infringement. (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.

10. INDEMNIFICATION/LIABILITY.

10.1 *By Client.* Subject to the terms, conditions, express representations and warranties provided in this Agreement, 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 to the extent 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 to the extent arising out of any (i) breach of Designer's responsibilities or obligations, representations or warranties under this Agreement; or (ii) any infringement of any intellectual property rights of Deliverables delivered by Designer hereunder. 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 provided by Client, improper or illegal use of a Deliverable by Client, or the failure by Client to update or maintain any Deliverables provided by Designer. Under such circumstances Client shall promptly notify Designer in writing of any claim or suit; (a) Designer has sole control of the defense and all related settlement negotiations; and (b) Client provides Designer with commercially reasonable assistance, information and authority necessary to perform Designer's obligations under this section. Designer will reimburse the reasonable out-of-pocket expenses incurred by Client in providing such assistance.

10.3 *Limitation of Liability.* **EXCEPT FOR CLAIMS RELATED TO INFRINGEMENT FOR SERVICES OR DELIVERABLES PROVIDED BY DESIGNER, ITS EMPLOYEES AND SUBCONTRACTORS HEREUNDER, IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES, TO THE OTHER PARTY FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND EACH PARTY'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO FOUR TIMES THE FEES PAID BY CLIENT HEREUNDER. EXCEPT FOR CLAIMS RELATED TO INFRINGEMENT FOR SERVICES OR DELIVERABLES PROVIDED BY DESIGNER, IN NO EVENT SHALL EITHER PARTY 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 SUCH PARTY, EVEN IF SUCH PARTY 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 unless terminated early by a party consistent with the terms herein.

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 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 as long as such termination is not due to a material breach by Designer; and Client shall pay all Expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation as long as such cancellation is not due to a material breach by Designer; Designer shall use reasonable efforts to mitigate such Expenses and Costs.

11.4 In the event of termination by Client and upon full undisputed 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 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 e-mail, 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.* Neither party shall be deemed in breach of this Agreement if such party is unable to perform its obligations hereunder or any portion thereof by reason of fire, earthquake, labor dispute, act of God or public enemy, death, incapacity of Designer or any local, state, federal, national or international law, governmental order or regulation or any other event beyond such party's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, the impacted party shall give notice to the other party of its inability to perform or of delay in performing its obligations hereunder 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 states of the Client and Drawing on the Promises 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 reasonable attorneys' fees and costs. Each party acknowledges that the other party may not have an adequate remedy at law in the event of a breach by a party hereunder, and hereby agrees that such aggrieved party 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, and the following documents as indicated by the parties' initials:

FPM Supplement 1: Print-Specific Terms & Conditions

FPM Supplement 3: Interactive-Specific Terms & Conditions

FRANK MCCLUNG
ADVISORY

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:

Drawing on the Promises LLC
23 Point Road
Crossville, TN 38571

Signed: _____ By: Frank McClung

Title: Principal Date: _____

CLIENT:

Authorized Representative
Client name & Address

Signed: _____ By:

Title: _____ Date: _____

Schedule A: Intellectual Property Provisions

IP 1. RIGHTS TO DELIVERABLES OTHER THAN FINAL ART.

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

IP 1.2 *Third Party Materials*. All Third Party Materials are the exclusive property of their respective owners. Designer shall inform Client of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Final Art. Under such circumstances Designer shall inform Client of any need to license, at Client's expense, and unless otherwise provided for by Client, Designer shall obtain the license(s) necessary to permit Client's use of the Third Party Materials consistent with the usage rights granted herein before such are integrated into any Services or Final Art. In the event Client fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of third party art, Client hereby indemnifies, saves and holds harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by 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 Art.

IP 1.3 *Preliminary Works*. Designer retains all rights in and to all Preliminary Works excluding any Client Content, Client Confidential Information, and Client Copyrights and Trademarks. Client shall return all Preliminary Works to Designer within thirty (30) days of completion of the Services and all rights in and to any Preliminary Works shall remain the exclusive property of Designer excluding any Client Content, Client Confidential Information, and Client Copyrights and Trademarks.

IP 1.4 Intentionally Omitted.

IP 1.5 *Designer Tools*. All Designer Tools are and shall remain the exclusive property of Designer. Designer hereby grants to Client a nonexclusive, nontransferable (other than the right to sublicense such uses to Client's Web hosting or Internet service providers), perpetual, worldwide license to use the Designer Tools solely to the extent necessary with the Final Deliverables for the Project. Client may not directly or indirectly, in any form or manner, decompile, reverse engineer, create derivative works or otherwise disassemble or modify any Designer Tools comprising any software or technology of Designer.

IP 2. RIGHTS TO FINAL ART.

IP 2.1 *For print, online/interactive, three-dimensional media*: Upon completion of the Services, and expressly subject to full undisputed payment of all fees, costs and out-of-pocket expenses due, Designer grants to Client the rights in the Final Art as set forth below. Any additional uses not identified herein require an additional license and may require an additional fee. All other rights are expressly reserved

by Designer. The rights granted to Client are for the usage of the Final Art in its original form only. Client may not crop, distort, manipulate, reconfigure, mimic, animate, create derivative works or extract portions or in any other manner, alter the Final Art. If Client wishes to use the Final Art in another use outside the original project, Client must notify Designer to negotiate terms, compensation, and conditions on a per use basis.

IP 2.2 *Licenses and Trademarks*. Upon completion of the Services and expressly conditioned upon full payment of all undisputed fees, costs and out-of-pocket expenses due, Designer assigns to Client a license in and to Final artwork or design comprising the logo and identity system created by Designer for unrestricted use, reproduction, and display by Client with the ability to copyright or Trademark as Client deems fit. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment and shall pay the Designer for their time at the hourly rate established in this document. Client 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; provided, however, Designer should use commercially reasonable efforts such as internet searches to determine if any Final Deliverable is infringing.

IP 2.4 Client's use of the Final Art shall be limited to the usage rights granted herein for the Project only. Use of the Final Art, Deliverables or any derivative works thereof by Client at any other time or location, or for another project or outside the scope of the rights granted herein require an additional fee to be negotiated by the parties in advance. In the event Client uses Final Art in violation of this section and does not compensate Designer as agreed, Designer shall be entitled to pursue all remedies under law and equity.

Supplement 1: Print-Specific Terms & Conditions

P 1. *Samples.* If agreed to by Client and with the cost being borne by Designer, Client shall provide Designer with 5 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. Designer shall provide copies of the current or standard trade practices to Client prior to any print work being done. Notwithstanding, Designer shall have no responsibility or obligation to negotiate changes or amendments to the current or standard trade practices.

Supplement 3: Internet-Specific Terms & Conditions

3.1 SUPPORT SERVICES

3.1.1 *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 30 days following expiration of this Agreement (“Warranty Period”), Designer will provide support services as is specified in the project Statement of Work. Additional time shall be billed at Designer’s regular hourly rate, then in effect upon the date of the request for additional support. The Client may request a different warranty period and support hours than those specified herein, and shall be agreed upon and written specifically into the Proposal as such.

3.1.2 *Maintenance Period.* None unless specifically called out in the Proposal. Client may obtain maintenance services at the Designer’s standard rate of \$95 per hour.

3.2 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.

3.3 ADDITIONAL WARRANTIES AND REPRESENTATIONS

3.3.1 *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. Except for losses attributable to infringement of a third party’s intellectual property rights by Designer, its employees, or subcontractors, 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.

3.3.2 *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. If they do infringe or violate the rights of a third party, Designer will indemnify Client as specified herein.

3.3.3 Search Engine Ranking. Designer is not responsible for search engines crawling and ranking Client websites while website is in development or live or at any other domains or at any time. Designer will be available at \$95/hr to assist Client with search rankings on an as requested basis.

3.3.4 Website Hosting. Designer is not responsible for the website hosting uptime, data backups or technical difficulties after the 30 day post Client website launch. Designer will be available at \$95/hr to assist Client in fixing issues and difficulties in conjunction with the hosting company on an as requested basis.

3.3.5 Website Security. Designer is not responsible for loss or damage to Client's data due to hacking of a website or other online system. Design will be available at \$95/hr to assist Client in fixing issues related to hacking of the Client website. Other third party services may also be required to fix Client sites that have been compromised. Work will be billed directly to Client with prior approval.

3.3.6 Email Spam and Scam. Designer is not responsible for spamming, phishing, pharming or spoofing originating from a Client's website or online system.

3.4 COMPLIANCE WITH LAWS

Designer shall use commercially reasonable efforts to ensure that all Final Deliverables shall be designed to comply with the known relevant rules and regulations. Client, upon acceptance of the Deliverables, shall be responsible for conformance with all laws relating to the transfer of software, technology, and data protection.

3.4.1 GDPR. Designer is not responsible for website notification compliance with Europe's General Data Protection Regulation (GDPR) unless specified in the Statement of Work.

3.4.2 Data, Privacy, and Storage. Client is responsible for all collection, storage, and dissemination of all personal privacy data from Client website.