

Terms

1) Time for Payment: Payment is due at each milestone upon the Client's acceptance of the Deliverables. All invoices are payable within 30 days of receipt. A 1 1/2% monthly service charge is payable on all overdue balances. The grant of any license or right of copyright is conditioned on receipt of full payment, unless a Tab is given.

2) Default in payment: The Client shall assume responsibility for all collection of legal fees necessitated by default in payment.

3) Estimates: If this form is used for an estimate or assignment confirmation, the fees and expenses shown are minimum estimates only. Final fees and expenses shall be shown when invoice is rendered. The Client's approval shall be obtained for any increases in fees or expenses that exceed the original estimate by 10% or more.

4) Expenses: The Client shall reimburse the Developer for all expenses arising from this assignment, including the payment of any sales taxes due on this assignment, and shall advance a minimum of 25-50% (unless stated otherwise) of the final cost to the Developer for payment of said expenses. Includes re-payment of all 3rd party fees: if covered.

5) Internet Access: Access to Internet will be provided by a separate Internet Service Provider (ISP) to be contracted by the Client and who will not be party to this agreement.

6) Progress Reports: The Developer shall contact or meet with the Client on a mutually acceptable schedule to report all tasks completed, problems encountered, and recommended changes relating to the development and testing of the Project. The Developer shall inform the Client promptly by telephone upon discovery of any event or problem that may delay the development of the work significantly.

7) Developer's Guarantee for Program Use: The Developer guarantees to notify the Client of any licensing and/or permissions required for art generating/driving programs to be used.

8) Changes: The Client shall be responsible for making additional payments for changes in original assignment requested by the Client. However, no additional payment shall be made for changes required to conform to the original assignment description. The Client shall offer the Developer the first opportunity to make any changes.

9) Testing and Acceptance Procedures

The Developer will make every good-faith effort to test all deliverables thoroughly and make all necessary corrections as a result of such testing prior to handing over the deliverables to the Client. Browsers & devices prior to 2007 are not guaranteed support. Upon receipt of the deliverables, the Client shall either: accept the deliverable and make the milestone payment set forth herein, or provide the Developer with written notice of any corrections to be made and an acceptable suggested date for completion. The Developer shall designate a primary party and the Client shall designate a primary party as the only designated persons who will send and accept all deliverables and receive and make all communications between the developer and the Client. Neither party shall have any obligation: to consider for approval, or respond to materials submitted other than through the designated persons listed on the quote. Each party has the right to change its designated person (upon delays) with notice to the other.

10) Web Site Maintenance

The Developer agrees to provide the Client with reasonable technical support and assistance to maintain and update the Web site on the Internet during the Warranty Period of (6 months by default unless stated otherwise) at cost to the Client. Such assistance shall not exceed 3 hours per calendar month without compensation or request with a technical work order in writing. After the expiration of the Warranty Period, the Developer agrees to provide the Client with reasonable technical support and assistance to maintain and update the Web site on the Internet for an annual fee or monthly development agreement for a period of 1 year after the last day of the Warranty Period payable 30 days prior to the commencement date of each year of the Maintenance Period. Such maintenance shall include correcting any errors or any failure of the Web site to conform to the specifications. Maintenance shall not include the development of enhancements to the originally contracted project. **DISCLAIMER- Designer is NOT responsible for 3rd party servers, software older than 2007, connection failure, or technical issues not directly related to the Designer's final product.**

11) Enhancements

Under the maintenance agreement, if the Client wishes to modify the Web site, the Developer shall be given first option to provide a bid to perform such enhancements.

12) Confidential Information

The Developer acknowledges and agrees that the source materials and technical and marketing plans or other sensitive business information, as specified by the Client, including all materials containing said information, that are supplied by the Client to the Developer or developed by the Developer in the course of developing the Project are to be considered confidential information. Information shall not be considered confidential if it is already publicly known through no act of the Developer.

13) Return of Source Information

Upon the Client's acceptance of the Final Version, or upon the cancellation of the project, the Developer shall provide the Client with all copies and originals of the source materials provided to the Developer. (where legal)

14) Ownership of Copyright

Client acknowledges and agrees that Developer retains all rights to copyright in the subject material unless otherwise stated as a 'work for hire'.

15) Cancellation

In the event of cancellation of this assignment, ownership of all copyrights and any original artwork shall be retained by the Developer, and a cancellation fee (50%) of Work completed, based on the prorated portion of the next payment and expenses already incurred, shall be paid by the Client. No materials provided on cancelation.

16) Training

In the case additional training is provided the client agrees to pay for support and training *outside the original agreement*, to be contracted.

17) Credit Lines

The Developer shall be given credit, If agreed the Developer shall receive copyright notice on work except GNU, Open Source, or works for hire.

18) Alterations

Any electronic alteration of original ad (color shift, mirroring, flopping, combination cut and paste, deletion) creating additional art is prohibited without the express permission of the developer. The Developer will be given first opportunity to make any alterations required. Unauthorized alterations shall constitute additional use and will be billed accordingly *unless expressly used as a feature of the final product.*

19) Unauthorized Use and Program Licenses

The Client will indemnify the Developer against all claims and expenses arising from uses for which the Client does not have rights to or authority to use. The Client will be responsible for payment of any special licensing or royalty fees resulting from the use of graphics programs that require such payments.

21) Warranty of Originality

The Developer warrants and represents that, to the best of his/her knowledge, the work assigned hereunder is original and has not been previously published, or that consent to use has been obtained on an unlimited basis; that all work or portions thereof obtained through the undersigned from third parties is original or, if previously published, that consent to use has been obtained on an unlimited basis; that the This warranty does not extend to any uses that the Client or others may make of the Developer's product that may infringe on the rights of others.

CLIENT EXPRESSLY AGREES THAT IT WILL HOLD THE DEVELOPER HARMLESS FOR ALL LIABILITY CAUSED BY THE CLIENT'S USE OF THE DEVELOPER'S PRODUCT TO THE EXTENT SUCH USE INFRINGES ON THE RIGHTS OF OTHERS.

22) Limitation of Liability and Arbitration

Client agrees that it shall not hold the Developer or his/her agents or employees liable for any incidental or consequential damages that arise from the Developer's failure to perform any aspect of the Project in a timely manner, regardless of whether such failure was caused by intentional or negligent acts or omissions of the Developer or a third party. Furthermore, the Developer disclaims all implied warranties, including the warranty of merchantability and fitness for a particular use. Arbitration is 60 days from failure of payment date, total is 90 days to settle outside the state court.
After 90 days damages will be pursued.

On Final Acceptance: of all Terms

The signature of both parties shall evidence acceptance of these terms.
Client is responsible for the copyright and protection of ALL primary company material.