

Standard Terms and Conditions

Updated October 2019

1. **Recitals:** Under this agreement Studio 22 Design, Inc. shall be ("the Agency") with its principal office in the state of California, USA and [client name indicated on Proposal for Services] ("the Client") agree to the terms herein, in good faith.
2. **Proposal:** The terms of the Proposal shall be effective for 30 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. **Timing:** Agency will prioritize performance of the Services as may be necessary or as identified in the Proposal, and will undertake all reasonable efforts to perform the Services within the timeline identified in the Proposal. Client agrees to review each stage of Deliverables as quickly as possible, and to (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 Agency. The Agency shall be entitled to request written clarification of any concern, objection or correction. Client acknowledges and agrees that Agency'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. 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 Agency's obligations under this Agreement.
4. **Completion Date:** The Agency cannot claim responsibility for client-related deliverables. If the Client does not supply the Agency with the deliverables needed to complete the site within the agreed upon timeframe, then the Agency is entitled to a progress payment of 50% of the remaining balance payable within fifteen (15) days.
5. **Forfeiture of Contract:** If the client has not provided material necessary to complete the project to the developer within one (1) year of the date this contract is signed, this action may be considered Cancellation. Forfeiture of Contract will be handled following the Termination guidelines written in this agreement.
6. **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 Agency; and (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
7. **Accreditations/Promotion:** Agency retains the right to reproduce, publish and display the Deliverables in Agency'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.

8. **Agency Agents:** Agency 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, Agency shall remain fully responsible for such Design Agents' compliance with the various terms and conditions of this Agreement.
9. **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 Agency, and Agency shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Agency

10. **Warranties and Representations:**

By Client. Client represents, warrants and covenants to Agency 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 the Services and Deliverables.

By Agency. (a) Agency hereby represents, warrants and covenants to Client that Agency 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) Agency 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 Agency and/or its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by Agency, Agency shall have secure agreements from such contractors granting all necessary rights, title, and interest in and to the Final Deliverables sufficient for Agency to grant the intellectual property rights provided in this Agreement, and (iii) to the best of Agency's knowledge, the Final Art provided by Agency and Agency'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 Agency 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

11. **Limitation of Liability:** THE SERVICES AND THE WORK PRODUCT OF DESIGNER ARE SOLD "AS IS." IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF AGENCY, 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 AGENCY, EVEN IF AGENCY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. Term and Termination

12.1 This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered or if inactivity causes a Forfeiture of Contract.

12.2 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.

12.3 In the event of termination, Agency shall be compensated for the Services performed through the date of termination in the amount of (a) the prorated portion of work delivered in the advance payment, (b) a prorated portion of the fees due beyond the advanced payment, or (c) the work delivered that is performed by Agency or Agency'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.

12.4 In the event of termination by Client and upon full payment of compensation as provided herein, Agency grants to Client such right and title to those Deliverables provided to, and accepted by Client as of the date of termination.

12.5 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.

13. **Confidential Information:** The Agency 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, which are supplied by the Client to the Agency or developed by the Agency in the course of developing the Website are to be considered confidential information and will not be disclosed by Agency to any third party without Client's prior written consent. Information shall not be considered confidential if it is already publicly known through no act of the Agency.
14. **Testing and Acceptance Procedures:** The Agency 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. Upon receipt of the deliverables, the Client shall either accept the deliverable and make the milestone payment set forth herein or provide the Agency with written notice

of any corrections to be made and a suggested date for completion which should be mutually acceptable to both the Agency and the Client.

15. **Dispute Resolution:**

A. Mediation; Arbitration. If we are unable to amicably resolve through discussion a dispute related to this Agreement, then either of us may require that the dispute be submitted to one (1) mediation session conducted by a mediator we select within fifteen (15) days. If we cannot agree on a mediator within that period, or if a mediation session is conducted but the dispute still exists, the dispute shall be settled by binding arbitration in the County of Santa Clara, California in accordance with the Commercial Arbitration rules of the American Arbitration Association by one arbitrator. Each of us shall each pay one-half (1/2) of the costs and expenses of the arbitrator, but we shall each be responsible for the fees and expenses of our respective legal counsel, witnesses and experts.

B. Injunctive Relief. Notwithstanding Section 15 A, either of us may apply to any court of competent jurisdiction for preliminary or interim equitable relief with regard to any matter related to confidential information, intellectual property rights, or to compel arbitration in accordance with Section 15 A.

16. **Project Commencement:** Please sign and send this form back to the Agency along with Payment Milestone #1 as indicated below. Work will begin upon receipt of the initial payment.

17. **Warranty Period:** The Agency agrees to provide the Client with reasonable technical support and assistance to maintain and update the Website during the Warranty Period of 30 days at no cost to the Client. Such assistance shall not exceed 1 hour per week.