

# PRYORMEDIA

## Terms & Conditions

All information and work associated with any Pryor Media proposal or contract, including cinematography, video editing, graphics design, photography, and website design, is subject to the following terms and conditions:

### PROPOSAL

The terms of this Agreement expires thirty (30) days after being submitted to Client. If this Agreement expires, Designer may modify the Agreement and resubmit it to Client.

### COMPENSATION

Client agrees to pay Designer the fees listed in the Project Proposal, including all taxes. Client will pay Designer expenses, including but not limited to: (a) Incidental and out-of-pocket expenses at cost plus Designers standard markup of fifteen percent (15%); (b) Milage reimbursement, other than normal commuting, at fifty-five (0.55) cents per mile; (c) Travel expenses, other than normal commuting, but including airfare and rental vehicles, with client approval. Pricing in the Project Proposal includes only Designer fees. Any other costs, such as hosting, art licensing or photography, will be billed to Client.

### PAYMENT

Payment is due when Designer completes each milestone as listed in the Work Plan and Milestones schedule, and Client accepts the Deliverables for that milestone. All invoices are payable within fifteen (15) of receipt. Invoices shall list any expenses and additional costs as separate items.

### LATE PAYMENT

A weekly service fee of 2 percent is payable on all overdue balances. **All grants of any license to use or transfer ownership of any product produced or intellectual property rights under this Agreement are conditioned on full payment**, including all outstanding Additional Costs, Expenses, Fees, or any other charges.

### CHANGES TO PROJECT SCOPE

If Client wants to change the Scope of Work after acceptance of this Agreement, Client shall send Designer a written Change Order describing the requested changes in detail. Within ten (10) days of receiving a Change Order, Designer will respond with a statement proposing designers availability, additional fees, changes to delivery dates, and any modification to the Terms and Conditions. Designer will evaluate each Change Order at its standard rate and charges. Client will be billed on a time and materials basis at Designers hourly rate of ninety (\$90) dollars per hour. Such charges shall be in addition to all other amount payable under this Agreement, despite any maximum budget, contract price or final price identified. Designer

may extend or modify any delivery schedule or deadlines in the Agreement as may be required by such changes. Client will have ten (10) days to respond in writing accepting or rejecting the new proposal. If Client rejects the proposal, Designer will not be obligated to perform any services beyond those in the original Agreement.

### DELAYS

Client shall use all reasonable efforts to provide needed information, materials and approvals. Any delay by Client will result in a day-for-day extension of the due date for all Deliverables. Any delay caused by conditions beyond the reasonable control of the parties shall not be considered a breach and will result in a day-for-day extension any performance due. Each party shall use reasonable efforts to notify the other party, in writing, of a delay. Conditions beyond the reasonable control of the parties include, but are not limited to, natural disasters, acts of government after the date of agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war, terrorism and epidemics.

### EVALUATION AND ACCEPTANCE

Client shall, within five (5) business days after receiving each Deliverable, notify Designer in writing of any failure to comply with the specification of the Project Proposal or of any other objections, corrections or changes required. Designer shall, within five (5) business days of receiving Clients notification, correct and submit a revised Deliverable to Client. Client shall, within five (5) business days of receiving a revised Deliverable, either approve the corrected version or make further changes. If after two (2) corrections by Designer, Client finds the Deliverables are not acceptable, Client may terminate this agreement subject to the termination clauses of this Agreement. If Client fails to provide approval or comments during any approval period, those Deliverables will be considered approved and accepted. All objections, corrections and changes shall be subject to the terms and conditions of this Agreement.

### ACCREDITATION AND PROMOTION

Designer shall be entitled to place accreditation, as a hyperlink, in the form, size and location as incorporated by Designer in the Deliverables on each page of the Final Deliverables, or at end of delivered production. Designer retains the right to reproduce, publish and display the Deliverables in Designer's portfolios and websites, 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.

#### **CONFIDENTIAL INFORMATION**

All material considered confidential by either party shall be designated as confidential. Confidential Information shall not be disclosed to third parties and shall only used as needed to perform this Agreement. Confidential Information shall not include any information that is already known by the recipient, becomes publicly known through no fault of the recipient, or is received from a third party without a restriction on disclosure.

#### **RELATIONSHIP OF THE PARTIES**

Designer is an independent contractor. Designer shall determine, in its sole discretion, the manner and means by which the Services are accomplished. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. 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 defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

#### **REPRESENTATIONS AND WARRANTIES**

Client represents and warrants to Designer that to the best of Client's knowledge, use of the Client Content does not infringe the rights of any third party. Designer represents and warranty to Client that to the best of Designer's knowledge, the Deliverables will not violate the rights of any third parties.

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.

#### **INDEMNIFICATION AND LIABILITY**

Client shall indemnify Designer from any and all damages, liabilities, costs, losses, expenses or attorney fees arising out of any claim, demand, or action by a third party due to materials included in Deliverables at the request of the Client.

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.

#### **TERM AND TERMINATION**

This agreement shall begin when both parties sign and shall continue until all Services are complete and delivered, or until the Agreement is Terminated. Either party may terminate this agreement at any time, on thirty (30) days prior written notice if the other party breaches any of its material responsibilities or obligations under this Agreement and fails to cure that breach during that thirty (30) day period. Either party may terminate this agreement at any time, on written notice to the other party, if the other party ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it. In the event of termination, Client shall pay Designer for the Services performed through the date of termination in the amount of a prorated portion of the fees due. Client shall pay all Expenses, Fees, and Additional Costs incurred through the date of termination.

#### **LICENSE**

Designer grants to Client a non-exclusive, perpetual and worldwide license to use and display the Final Deliverables in accordance with this Agreement. The rights granted to Client are for use of the Final Deliverables in its original form only. Client may not change, create derivative works or extract portions of the Final Deliverables, unless expressly stated by Designer.

#### **PRELIMINARY WORKS**

Designer retains all rights in and to all Preliminary Works. Client shall return all Preliminary Works to Designer within thirty (30) days of completion of the Services. All Designer Tools are and shall remain the

exclusive property of Designer. Designer grants Client a nonexclusive, nontransferable, perpetual, worldwide license to use the Designer Tools solely to the extent necessary with the Final Deliverables for the Project.

#### **BACKDOOR DISCLOSURE**

Designer retains the right to install methods which allow access in the event of access loss, whether accidental or otherwise, to protect the integrity and technical ability of the product Designer produces for Client. Any and all code which allows for "backdoor" access will be removed upon 100% completion of the contract for work rendered, including delivery to Client servers and complete payment for service by Client.

#### **SUPPORT SERVICES**

During the first three (3) months following expiration of this Agreement, Designer shall provide up to forty (40) hours of Support Services at no additional cost to Client. Support Services means commercially reasonable technical support and assistance to maintain and update the Deliverables, including correcting any errors or Deficiencies. Requests for additional support will be billed on a time and materials basis at Designers standard rate. The services in the Warranty Period and do not include enhancements to the Project or other services outside the scope of the Proposal.

#### **ALTERATIONS**

Alteration of any Deliverable is prohibited without the express permission of Designer. Designer will be given the first opportunity to make the required alterations. Unauthorized alterations may constitute additional use and will be billed accordingly. Should Client decide to modify anything about the delivered product, Designer will be exempt of all responsibility for any issues experienced thereafter, as expressed in the INDEMNIFICATION AND LIABILITY section of this agreement.

#### **NON-PAYMENT**

After sixty (60) days without payment of an invoice, in addition to any fees associated with due payment, including but not limited to late fees mentioned within this agreement, Designer may impose technological and/or business-related penalties on Client, including but not limited to: 1) Loss of future work orders, or forfeit of future business requests, 2) Forfeit of existing discount offers or coupons, which may result in increased cost for Client, 3) Negative reviews and comments to business partners and associations of Designer to protect their interests, 4) Locking of Delivered product, including the usage of Backdoor coding described above to access website after delivery, and/or 5) Cancellation of service and denial of account access with Designer. Any penalties associated with non-payment in this way will be

reversed or removed, where possible, when payment is received in full, including all late fees associated with late payment as described within this agreement.

#### **DISPUTE RESOLUTION**

Parties agree to attempt to resolve any dispute by negotiation between the parties. If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties. The prevailing party shall be entitled to recover its attorneys' fees and costs in any dispute resolved by binding arbitration or litigation.

#### **GENERAL**

Modifications to this Agreement must be in writing and signed by both parties. 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. All notices under this Agreement shall be given in writing either by: (a) Fax or Email, with return confirmation of receipt; (b) Certified or Registered mail, with return receipt requested. Notice will be effective when received, or in the case of email or fax, on confirmation of receipt. Rights or obligations under this Agreement shall not be transferred, assigned or encumbered without the prior written consent of the other party. This Agreement shall be governed by the law of California. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Where possible the invalid or unenforceable provision shall be interpreted in such manner as to be effective and valid under applicable law. Headings and numbering used in this Agreement are for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of this Agreement, and shall not have any legal effect. This Agreement is the entire understanding of the parties and supersedes all prior understandings and documents relating to the subject matter of this Agreement.