

DEFINITIONS

As used herein and throughout this Agreement:

"Agreement" means the entire content of this Basic Terms & Conditions document, the Proposal or Estimate document(s), together with any exhibits, schedules or attachments hereto.

"Company" *"Designer"* and *"WC"* refer to Weiher Creative, Inc.

"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.

"Deliverables" means the Services and work product specified in the Proposal or Estimate to be delivered by Designer to Client, in the form and media specified in the Proposal or Estimate.

"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 design, 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.

"Project" means the scope and purpose of the Client's identified usage of the work as described in the Proposal or Estimate.

"Services" means all Services and the work product to be provided to Client by WC as described and otherwise further defined in the Proposal.

"Trademarks" means trade names, words, symbols, designs, logos or other devices or designs used in the Final Art and Deliverables to designate the origin or source of the goods or services of Client.

REPRESENTATIONS AND WARRANTIES

WC represents and warrants that WC has the full and unrestricted right, power, and authority to enter into this Agreement and WC has no other agreements with any other party that would conflict with this Agreement.

Client represents and warrants that:

- (i) Client has the full and unrestricted right, power, and authority to enter into this Agreement and Client has no other agreements with any other party that would conflict with this Agreement;
- (ii) Client is responsible for the accuracy of all information provided by Client to Company and represents and warrants that Client is the owner of any right, title and interest to any intellectual property provided to Company in connection with the Services or pursuant to this Agreement and such content does not violate the rights of any third parties;
- (iii) Client agrees to comply with the terms and conditions of any licensing agreements governing the use of third-party materials utilized by WC in connection with the Services;
- (iv) Client will be responsible for promptly responding to requests for information and approvals from WC; and
- (v) Client shall comply with all laws and regulations as they relate to the Services.

EFFECTIVE DATE

The terms of any Proposal or Estimate shall be effective for sixty (60) 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.

FEES AND CHARGES

Fees. In consideration of the Services to be performed by WC, Client shall pay to Designer fees in the amounts according to the payment schedule set forth in the Proposal or Estimate.

Expenses. The Project pricing includes Designer's fee only (unless otherwise noted). In addition, any and all outside costs or expenses will be included as a separate line item and invoiced to Client. Such costs may include but are not limited to: photographer or illustrator fees, stock photography purchases/rights, management fees, stock illustration, and printing/fabrication costs, at cost plus Designer's standard markup of twenty percent (20%). No additional charges beyond the quoted amount shall be incurred for the project unless approved by the Client.

Additional Services. By mutual agreement of the Parties, WC may provide additional services that are outside the scope of the applicable exhibit. Should WC elect to provide such additional services, such work will thereby be considered Services, and Client will be billed at WC's hourly rate of \$125 USD per hour or if agreed to in writing by the Parties, a new flat fee. Any additional Services will be invoiced to Client, as needed, every thirty (30) days until completion of the Services.

Invoices. All invoices are payable within thirty (30) days of receipt. Client will be charged a late fee of one percent (1%) per month for any balance thirty (30) days or more past due. Payments will be credited first to late payment charges and next to the unpaid balance. All costs associated with the collection of overdue accounts, including attorney's fees and expenses and any court fees or filing fees, will be billed to Client, and Client hereby agrees that Client is responsible for such costs, fees and expenses. WC further reserves the right to suspend Services if at any time, any fees, expenses, or invoices are past due.

Deposits. If a deposit is required under the applicable Proposal or Estimate, Services shall not commence until such deposit has been paid in full. Any deposits or amounts pre-paid to WC are non-refundable. Should a project fail to be completed within one (1) year after date of pre-payment, due to delay by Client, such pre-paid sums will be forfeited and WC will have no obligation to provide the Services. In the event that the project

stalls due to the Client's actions, including not providing Client Content in a timely manner or not providing feedback on Deliverables, the Project shall be considered on-hold. Once a project is on-hold for over sixty (60) days, Designer will invoice for outstanding Services and incurred costs and expenses completed at that time and can terminate the project. Furthermore, any project that is stalled or on hold for over sixty (60) days may be subject to a restart fee of \$500 USD or 5% of the total project cost, whichever is greater, if Client desires to resume the project.

TERM AND TERMINATION

This Agreement shall commence upon the Effective Date of the Proposal or Estimate and shall remain effective until the Services are completed and delivered.

Either party may terminate this Agreement at any time prior to provision of the Deliverables upon seven (7) days written notice to the other party. Should Client terminate the Agreement, Client shall pay WC for all Services provided prior to the effective date of termination, at Company's applicable hourly rate and for all costs and expenses incurred in accordance with the payment terms herein. Should the Services be provided on a flat rate basis, Client shall pay WC any outstanding costs and expenses and a prorata share of the applicable flat fee based on the Services provided in accordance with the payment terms herein.

These Basic Terms & Conditions shall apply to all Projects performed by WC on behalf of the Client pursuant to a Proposal or Estimate provided by WC and accepted by the Client, as if such Basic Terms & Conditions are stated in their entirety in such Proposal or Estimate, unless such Basic Terms & Conditions are altered in writing and signed by both parties.

RELATIONSHIP OF THE PARTIES

Independent Contractor. WC is an independent contractor, and nothing contained in this Agreement shall be construed to (a) give either party the power to direct and control the day-to-day activities of the other, (b) constitute the parties as partners, joint venturers, co-owners, or otherwise, or (c) allow either party to create or assume any obligation on behalf of the other for any purpose whatsoever. WC is not an employee of Client and is not entitled to any employee benefits. WC shall be responsible for paying all income taxes and other taxes charged to WC on amounts earned hereunder. All financial and other obligations associated with WC's business are the sole responsibility of WC.

Designer Agents. WC 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").

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 similar nature to those provided by WC, and WC shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by WC.

USAGE & LICENSING TO CLIENT

All rights to all Services and Deliverables are maintained by WC until full payment is received. After full payment is received, WC grants Client a perpetual, irrevocable, limited, non-exclusive, nontransferable, worldwide license, without the right to grant sub-licenses, to use the final approved versions of the Deliverables solely for the purpose for which they were provided to Client. WC retains all other rights not specifically granted herein. Usage is limited to web and printed materials, but does not include the right to modify or resell artwork. Specifically, Client may not extract any portion of the Deliverables to be used outside of its intended purpose within the Deliverables. Should Client wish to utilize any portion of the Deliverables outside of this scope, Client must contact WC to request permission and/or a license for an additional use.

WC retains all rights to any elements of Deliverables that are part of WC's own process and are not specifically designed and/or created for Client, including, but not limited to: early design options that were not selected and documentation associated with the project. WC will also retain all copyrights and intellectual property rights to any abandoned ideas or design iterations that are not part of the final approved version of the Deliverables. Only the license to use the final approved versions of the Deliverables will be assigned pursuant to this Agreement.

LICENSE TO COMPANY

After full payment is received by WC, Client grants WC a perpetual, irrevocable, limited, non-exclusive, nontransferable, worldwide license, without the right to grant sub-licenses, to use the final approved versions of the Deliverables in WC's portfolio, on WC's website and social media sites, in trade publications or other media or for other potential marketing purposes. However, WC agrees that such use shall only be made after Client has publicly used the Deliverables.

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 (all materials, information, photography, writings and other creative content provided by Client in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal or Estimate); and (c) final proofreading. Client understands and agrees that Client is solely responsible for any errors found after Client has approved the final version of the Deliverables and Client will remain responsible for any damages in connection therewith.

Client agrees and understands that WC cannot provide any opinion, advice or guarantee about whether any of the Services or Deliverables will be eligible for trademark registration. WC is also not responsible for interpreting or providing an opinion or advice about the terms of any license for any third-party materials used by WC in executing the Services. Finally, WC uses best efforts to ensure that all materials used for the Services/Deliverables do not infringe upon a third-party's intellectual property rights. In the event, a third-party makes such a claim, WC will not be responsible.

Should Client have a question or concern about intellectual property rights, WC recommends consulting with an attorney for such opinion or advice. WC expressly disclaims any liability regarding potential trademark registration or proper usage of third-party materials. Client understands and agrees to this provision.

Client understands and agrees that WC is not liable for any work completed for Client by third-parties, including, but not limited to, site developers or photographers, whether recommended by WC or not.

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.

INDEMNIFICATION/LIABILITY

Indemnification. Client shall indemnify, defend, and hold WC harmless from and against any loss, liability, damage, or expense, including reasonable attorney’s fees, incurred or suffered by or threatened against WC in connection with or as a result of any claim brought by or on behalf of any third-party person or entity as a result of or in connection with Client’s breach of any provision of this Agreement (including any representation or warranty) or any act or omission of Client.

Limitation of Liability. The Services are sold “AS IS.” The maximum liability of WC, its directors, officers, employees, agents or affiliates, 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 fees paid by Client under this Agreement. In no event shall WC be liable for lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the Services, even if WC has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

NO WARRANTIES

Except for the express representations and warranties in Section 2 of this Agreement, WC makes no warranties whatsoever. WC 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.

ARBITRATION AND JURISDICTION

All disputes between the Parties arising out of or in connection with the Agreement or any breach thereof will be determined and settled by binding arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). The arbitration will not be combined with any other proceeding or arbitration against one of the Parties. The place of any such arbitration shall be in or near Snohomish County, Washington. Each Party will designate one arbitrator and the two designated arbitrators will select a third arbitrator to serve as the chair of the arbitration panel. If the two arbitrators cannot agree on the third arbitrator, then the AAA will appoint the third arbitrator. Barring extraordinary circumstances, the arbitrators will issue their decision within one hundred twenty (120) days from the date the third (3rd) arbitrator is selected. The arbitrators may extend this time limit for an additional thirty (30) days in the interests of justice. All arbitration proceedings will be closed to the public and confidential and all records relating thereto will be permanently sealed, except as necessary to obtain court confirmation of the arbitration award. The arbitrators’ decision and award will be in writing and will include a statement setting forth the reasons for the disposition of any claim. A dissenting decision will also be set forth in writing. The award rendered by the arbitrators will be final and binding on the Parties, and judgment thereon may be entered in any court of competent jurisdiction. The arbitration will be governed by and construed in accordance with Washington law without reference to conflict of laws provisions. For all other disputes not subject to this provision, the Parties agree to that Washington law shall apply and all disputes must be brought in the Court of competent jurisdiction in Mill Creek, Washington.

FORCE MAJEURE

WC is not breach of this Agreement if WC is unable to complete the Services or any portion thereof by reason of fire, earthquake, labor dispute, act of God or public enemy, death, illness or incapacity of Company employees, or any local, state, federal, national or international law, governmental order or regulation or any other event beyond WC’s control (each a “Force Majeure Event”). Upon occurrence of any Force Majeure Event, WC will give notice to Client of its inability to perform or of its delay in completion of the Services and will propose revisions to the schedule for completion of the Services.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date below.

WEIHER CREATIVE, INC.

Signature:

Printed Name:

Organization:

Date:

CLIENT

Signature:

Printed Name:

Organization:

Date: