

This agreement details the terms of all services we perform.

### Independent Contractor - Terms of Service

*This agreement is made effective as of this date between us, hereinafter referred to as contractor, and customer, hereafter referred to as client.*

WHEREAS, contractor represents to the client the he is principally a graphic designer, providing commercial artwork service for use in business applications. This includes but is not limited to, traditional print media, internet development, product manufacture, websites, and specialty promotion; and other commercial graphic products.

WHEREAS, client is desirous of utilizing contractor's skills as a graphic designer, website author and professional design advisor.

WHEREAS, it is agreed between the parties as follows:

#### 1. Contractor's Services

The contractor shall provide the basic and supplementary services specified below.

**1.01 Retention as Independent Contractor** - Client agrees to hire contractor and contractor agrees to act as independent contractor for client to provide the services set forth in this agreement. The parties agree that the relationship shall be that of contractor and client, not employer/employee nor shall it constitute an agent/principal relationship. All provisions of the relationship between the parties shall be governed by the terms of this agreement, which cannot be modified without the express written consent of client and contractor.

**1.02 Scope of Contractor's Services** - Contractor agrees to perform for client the services listed below. Such services are hereinafter referred to as "Services." Client agrees that contractor shall have ready access to client's staff and resources as needed to perform the contractor's services provided by this agreement.

Contractor's services will be expressly limited to the following items:

- The development of primary websites for the domain
- Implementation of technologies related to primary website
- Limited technical assistance for operation and management
- Consultation & evaluation

**1.03 Excluded Services** - In addition to any work not included above, contractor will not be responsible for projects outside the scope of the client's normal course of business or third party interaction and support.

**1.04 Staff** - Contractor is an independent contractor and neither contractor nor contractor's staff is, or shall be deemed, employed by client. Contractor will not be treated as an employee for any purpose whatsoever with respect to the services provided pursuant to this agreement.

Client is hereby contracting with contractor for the services described and contractor reserves the right to determine the method, manner and means by which the services will be performed.

**1.05 Hours of Contractor's Work** - Contractor is not required to perform the services during a fixed hourly or daily time. If the services are performed at the client's premises, then contractor's time spent at the premises is to be at the discretion of the contractor, subject to the client's normal business hours and security requirements. Contractor shall not be required to devote contractor's full time nor the full time of the contractor's staff to the performance of the services required hereunder, and it is acknowledged that contractor has other clients and contractor offers services to the general public. The order or sequence in which the work is to be performed shall be under the control of contractor. Except to the extent that the contractor's work must be performed on or with the client's equipment.

Any time off, including weekends and vacation, will be solely and entirely at the contractor's discretion. Notwithstanding the foregoing, the contractor shall work diligently and use his or her best efforts to fulfill the mission and goals of the client; to complete the agreed upon tasks of the work described above and to otherwise advance the business of the client.

**1.06 Maintaining Client's Goodwill** - The contractor agrees to conduct business and regulate his habits in order to minimize and negative effect upon the goodwill and reputation of the client.

**1.07 Confidentiality** - All client trade secrets and confidential information obtained by contractor while in performance of said services shall be regarded by contractor as strictly confidential and shall be held by contractor in trust for client. Confidential information is information that relates to client's research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by nonparties of ordinary skill.

Contractor hereby acknowledges that during the performance of this contract, the contractor may learn or receive confidential client information. Therefore contractor hereby confirms that all such information relating to the client's business will be kept confidential except to the extent that such information is required to be divulged to the contractor's clerical or support staff or associates in order to enable contractor to perform contractor's obligations. All discoveries, improvements, graphic artwork, programs, software and inventions made or conceived by contractor while in performance of this agreement shall remain the sole property of contractor.

**1.08 Non-Competition** - Contractor agrees, during the term of this agreement and for a period of one (1) year after the completion of the term of this agreement, not to compete directly with client in business.

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## 2. Payment for Contractor's Services

The client shall pay the contractor for the services described in this contract as follows:

**2.01 Basic Services** - The contractor shall provide basic services for the project consisting of consultation, research, design, supervision of implementation, and coordination of the project

and its execution. In connection with performing basic services, the contractor shall prepare and present materials to the client that demonstrate or describe the designer's intentions and shall prepare various materials, such as artwork, drawings, and specifications, to enable the design to be printed, fabricated, installed, or otherwise implemented.

**2.02 Supplementary Services** - In addition to the services described above, the contractor's fee may also include the provision of certain specialized supplementary services. Such supplementary services might include: Creative services including copy development, editing, photography, and illustration. Preparation of existing materials for reproduction such as partial or complete redrawing, line conversion, retouching, and making camera-ready color separations. Preparation of special presentation materials including detailed renderings, comps, mockups, and presentations.

The contractor's services under this agreement do not include implementation such as printing, fabrication, and installation of the project design. The client and contractor agree that any such implementation is to be provided by others, and the contractor's services with respect to such implementation shall be restricted to providing specifications, coordination, and management. Unless otherwise specified in this agreement, the contractor shall have no responsibility to the providers of such implementation, and charges therefore shall be billed directly to the client. While not responsible for implementation, in a supervisory capacity the contractor may assume responsibility for paying such charges, and the contractor shall be entitled to reimbursement from the client for implementation costs plus such handling charge as is specified herein.

**2.03 Rate of Payment** - Client agrees to pay contractor for services in accordance with the terms of invoicing listed below. Payment shall be made to the contractor in the gross amount of payment due, without withholding federal, state or local income taxes. Contractor agrees to pay all self-employment and other taxes, including income taxes and estimates thereof.

Client shall pay any and all taxes, except income taxes including but not limited to sales or use taxes. Contractor shall be responsible for any taxes or penalties assessed by reason of any claims that contractor is an employee of client, and client and contractor specifically agree that contractor is not an employee of client.

**2.04 Invoicing** - Client shall pay the amounts agreed to herein upon receipt of invoices or statements, sent by the contractor. Contractor will extend services of 1 hour, but not to exceed 20 hours. Client agrees to immediately pay contractor upon receipt of contractor's invoice. Should contractor's invoice not be paid within ten (10) days of receipt thereof, contractor shall have the absolute right to suspend all work for client until such time as the invoice amount, in addition to a late payment charge, is paid. The late payment charge is to compensate contractor for the administrative costs incurred by contractor as the result of such late payment.

If any invoice is unpaid thirty or more days past its due date, contractor shall have the absolute right to terminate this agreement without further liability. Client shall still remain fully liable to contractor for all services performed by contractor up to the date of termination of the agreement by contractor.

**2.05 Summary of Hours Allotted Under Agreement** - Where specified in this contract, the

client shall pay the contractor at the contractor's standard hourly rates as in effect at this time. No change shall be made in the contractor's standard rates prior to 90 days from the date of this agreement.

**2.06 Initial Payment** - Upon signing this agreement, client shall make a payment equal to the amount of the required deposit.

**2.07 Payment Schedule** - After receipt of an invoice, the client shall make payments.

**2.08 Revisions and Additions** - A fixed fee or fee estimated not to exceed a specified amount is based upon the time estimated to complete the services specified in this agreement during normal working hours. Any revisions or additions to the services described in this agreement shall be billed as additional services not included in any fixed fee or estimated fee specified above. Such additional services shall include, but shall not be limited to, changes in the extent of work, changes in the complexity of any elements of the project, and any changes made after approval has been given for a specific stage of design, documentation, or preparation of artwork.

**2.09 Rush Work** - The client shall pay a surcharge for any services requiring work to be performed outside of normal working hours by reason of unusual deadlines or as a consequence of the client not meeting scheduled times for delivery of information, materials, or approvals. The surcharge for rush work shall be at the standard rates plus an additional 50% of the total, for each instance. Normal working hours for this project are during regular business hours of Monday - Friday, 9am-5pm.

**2.10 Reimbursable Expense** - The client shall reimburse the contractor for all out-of-pocket expenses incurred by the contractor with respect to the project including, but not limited to, expenditures for: Implementation, typesetting, prints, photography, overlays, proofs, presentation materials, copies, telephone charges, postage, and shipping.

**2.11 Reimbursable and Implementation Budgets** - Any budget figures or estimates for reimbursable expenses or implementation charges such as printing, fabrication, or installation are for planning purposes only. The contractor shall use his or her best efforts to work within stated budgets but shall not be liable if such expenses exceed budgets. The contractor shall maintain records of hours and reimbursable expenses and shall make such records available to the client for inspection on request.

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## 3. Client's Obligations

**3.01 Client's Representative** - The client shall appoint a sole representative with full authority to provide or obtain any necessary information and approvals that may be required by the contractor. The client's representative shall be responsible for coordination of briefing, review, and the decision-making process with respect to persons and parties other than the contractor and its subcontractors. If, after the client's representative has approved a design, the client or any other authorized person requires changes that require additional services from the contractor, the client shall pay all fees and expenses arising from such changes as additional

services.

**3.02 Materials to be provided by the Client** - The client shall indemnify, defend, and hold the contractor harmless from and against any claim, suit, damages and expense, including attorney's fees, arising from or out of any claim by any party that its rights have been or are being violated or infringed upon with respect to any materials provided by the client.

All copy provided by the client shall be in a form suitable for typesetting. Where the client provides photographs, illustrations, or other visual materials, they shall be of professional quality and in a form suitable for reproduction without further preparation or alteration. The client shall pay all fees and expenses arising from its provision of materials that do not meet such standards. The contractor shall return all materials provided by the client within 120 days after completion of the project and payment of amounts due.

**3.03 Liability of Designer** - The contractor shall take reasonable precautions to safeguard original or other materials provided by the client. The contractor shall, however, not be liable for any damage to, or loss of any material provided by the client, including artwork, photographs, or manuscripts, other than or on account of willful neglect or gross negligence of the contractor.

**3.04 Approval of Typesetting and Final Artwork** - The client shall proofread and approve all final type before the production of artwork. The signature of the client's representative shall be conclusive as to the approval of all artwork drawings and other items prior to their release for printing, fabrication, or installation.

**3.05 Instructions to Third Parties** - The client specifically grants to the contractor the right to act on the client's behalf to give instructions on behalf of the client to any person or entity involved in the project, such as photographers, illustrators, writers, and printers. Any such instructions or approvals by the client may only be made through the contractor. The client agrees to be bound by any terms and conditions, including required credits, with respect to reproduction of such material as may be imposed on the contractor by such third parties.

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## 4. Rights & ownership of contractor's work product

All services provided by the contractor under this agreement shall be for the exclusive use of the client other than for the promotional use of the contractor. Upon payment of all fees and expenses, the following reproduction rights for all approved final designs created by the contractor for this project shall be granted:

**4.01 Use of Contractor's Work Product** - Except as specifically set forth in writing and signed by both client and contractor, contractor shall have all copyright and patent rights with respect to all graphics, artwork, code & technology source materials developed under this contract. Client is hereby granted a non-exclusive license to use and employ such materials within the client's normal course of business. In no event shall client obtain any rights to any of contractor's work in excess of a non-exclusive license, unless client and contractor so agree in writing, and contractor is paid additional compensation for such increased rights.

**4.02 Further Transfer of Contractor's Work Product** - Any license granted client under this agreement shall be personal to client only, and the license to use contractor's work product may not be transferred or assigned by client without the prior written consent of contractor. Client and contractor may reach a separate agreement for the additional use of contractor's work product in excess of the use allowed by this agreement. Such separate agreement shall provide for additional payment to contractor for such additional use of the contractor's work product.

**4.03 Client's Materials** - All materials, artwork and logos that are the previous copyright of client, shall remain the property of client. Contractor reserves the right to use all materials created and/or developed under this agreement, excluding material that is the previous copyright of client, in any way it sees fit. In addition, contractor retains the limited right to use all finished products, which may incorporate client's copyrighted material to promote contractor's services and offerings.

**4.04 Client's Representations Regarding Materials Provided Contractor** - All copy, graphics, artwork, logos or other materials submitted by the client for use by contractor for use in producing the services under this agreement will be accepted by contractor as being submitted in full compliance with all applicable laws regarding trademark, service mark, copyright, right of privacy, patent or similar protection. Client warrants and represents to contractor that it has the right, title to and ability to use upon its website, any materials submitted to contractor to be incorporated into the project by contractor. Client agrees to defend and indemnify contractor from any and all claims of any nature arising from or related to any materials submitted to contractor by client for use in client's website.

**4.05 Return of Property** - The contractor shall protect the property of the client used in the performance of the services to be rendered as described in this agreement and shall immediately return all such property items upon request by client.

All drawings, artwork, specifications, and other visual presentation materials remain the property of the contractor. The client shall be entitled to temporary possession of such materials only for the purpose of reproduction after which all materials shall be returned, unaltered, to the contractor.

All preliminary concepts and visual presentations produced by the contractor remain the property of the contractor and may not be used by the client without the written permission of the contractor.

The contractor shall retain all artwork, drawings, and specifications, for which reproduction rights have been granted for a 90 days period from the date of the signing of this agreement. Upon expiration of this period, all such materials may be destroyed unless the client has requested, in writing, that they be retained or returned. The client shall have reasonable access to all such materials for the purpose of review.

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## 5. Miscellaneous

**5.01 Code of Ethics** - The contractor's services shall be performed in accordance with the

attached code of ethics.

**5.02 Credit** - The contractor shall have the right to include a credit line on the completed designs or any visual representations such as drawings, models, or photographs and this same credit shall be included in any publication of the design by the client. The client shall not, without written approval, use the contractor's name for promotional or any other purposes with respect to these designs. The contractor's credit line shall read as follows:

### **"Design by Jack Marvin"**

**5.03 Samples And Photographs** - The client shall provide the contractor with samples of each printed or manufactured design. Such samples shall be representative of the highest quality of work produced. The contractor may use such copies and samples for publication, exhibition, or other promotional purposes.

The number of samples to be provided to the contractor shall be three.

The contractor shall have the right to photograph all completed designs or installations and shall have the right to use such photographs for publication, exhibition, or other promotional purposes.

**5.04 Confidentiality** - The client shall inform the contractor in writing if any portion of any material or information provided by the client or if any portion of the project is confidential.

**5.05 Sales Tax** - The client shall pay any sales, use, or other transfer taxes that may be applicable to the services provided under this agreement, including any tax that may be assessed on audit of the contractor's tax returns.

**5.06 Assignment** - Neither the client nor the contractor may assign or transfer their interest in this agreement without the written consent of the other.

**5.07 Termination** - Either party may terminate this agreement upon giving written notice to the other as specified below. Upon termination of this agreement by the client or by the contractor for cause, the contractor may retain any initial payment and the client shall pay the contractor for all hours expended on the project, up to the date of termination, at the contractor's standard rates together with all other amounts due hereunder. Any initial payment that has been received shall be credited against any such amounts due. All indemnities shall continue even after any such termination. The amount of written notice to be given by either party shall be 90 days.

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## **6. Default**

**6.01 Default** - The following shall constitute a default under this agreement:

- (a) Failure to Pay Invoices or Make Other Payments - Failure to pay any invoice rendered by contractor within ten (10) days after the date of receipt thereof.
- (b) Representation or Warranty Incorrect or Misleading - Any representation or warranty

by the client in this agreement or in any certificate or opinion furnished in connection with this agreement shall have proved to be materially incorrect or misleading as of the date when made.

- (c) Bankruptcy - The Client or other related entity; (a) be adjudicated a bankrupt, (b) not pay, or acknowledge in writing its inability to pay, its debts generally as they become due, (c) make an assignment for the benefit of creditors, (d) institute any proceeding seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment, or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of client, or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (e) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator, or similar official for it or for any substantial part of its property, or (f) take any corporate action to authorize or effect any of the foregoing actions set forth in this section.
- (d) Other Acts of Bankruptcy - The appointment, without the application, approval, or consent of the client or other related entity, of a receiver, trustee, Examiner, liquidator, or similar official for the client or other related entity or any substantial part of its property, or a proceeding described in subsection (d) of the preceding section shall be instituted against the client or other related entity, and such appointment continues un-discharged or such proceeding continues un-dismissed or un-stayed for a period of thirty (30) days.

**6.02 Remedies Upon Default** - Upon the occurrence of any of the items in section 6.01 above, contractor shall have the option of immediately suspending performance under the terms of this agreement until such default is cured. If the default is not cured within thirty days, contractor may terminate this agreement without further liability to client. In such event, client shall remain responsible for the payment of any and all work performed on client's behalf up to the date of the termination of this agreement.

**6.03 Entire Agreement** - This agreement represents the entire agreement between the client and the contractor and may be changed or modified only in writing.

**6.04 Representation** - The client represents that it has full power and authority to enter into this agreement and that it is binding upon the client and enforceable in accordance with its terms.

The contractor represents that it has full power and authority to enter into this agreement and that it is binding upon the contractor and enforceable in accordance with its terms.

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## 7. Miscellaneous Terms

**7.01 Disputes** - Any disputes that arise between parties with respect to the performance of this agreement shall be submitted to binding arbitration by a neutral third party. Said arbitration is to be determined and resolved by said association under its rules and procedures in effect at the time of submission and the parties hereby agree to share equally in the costs of said arbitration. The arbitrator's award shall be final and judgment may be entered upon it in any court having jurisdiction thereof.



**7.02 Sever Ability** - In the event that any term, provision, covenant or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this agreement shall remain in full force and effect and in no way shall be affected or invalidated, as if this section were not a part hereof. In such a case the provisions of this agreement shall be governed in its interpretation and effect by the laws of the State of California. Any suit, action, proceeding to enforce or interpret any of the provisions hereof shall be instituted and maintained in the Superior Court in and for the County of Orange.

**7.03 Indemnity** - Contractor shall hold client harmless from damages or obligations incurred by Contractor while performing services hereunder. Contractor shall incur no obligations on the account of or in the name of client, except after specific written instructions authorizing contractor to do the same.

**7.04 Duration of Agreement** - This agreement shall become effective upon execution and shall continue until complete. Unless, both parties mutually agree to terminate this agreement and one party gives the other party thirty days' written notice of termination. The provisions of this agreement may be waived, altered, amended or replaced, in whole or in part, at any time only by the written consent of all parties to this agreement.

**7.05 Additional Work** - After receipt of an order, which adds to the services, contractor may at its discretion, take reasonable action and expend reasonable amounts of time and money based on such order. Client agrees to pay contractor for such action and expenditure as set forth in this agreement, for payments related to services.

**7.06 Interpretation** - The paragraph headings of this agreement are for reference and convenience only and are not part of this agreement. They have no effect upon the construction or interpretation of any part hereof. Any rule of law or legal decision that would require interpretation of any ambiguities in this agreement against the party that has drafted it is not applicable and is waived. The provisions of this agreement shall be construed in a reasonable manner to affect the purposes of the parties and of this agreement.

**7.07 Limitation of Contractor's Liability** - Contractor warrants to client that the services to be delivered or rendered hereunder will be of the kind and quality designated and will be performed by qualified personnel. Contractor makes no other warranties, whether written, oral or implied, including without limitation, warranty of fitness for purpose or merchantability. In no event shall contractor be liable for special or consequential damages, either in contract or tort, whether or not the possibility of such damages has been disclosed to contractor in advance or could have been reasonably foreseen by contractor, and in the event this limitation of damages is held unenforceable then the parties agree that by reason of the difficulty in foreseeing possible damages all liability to client be limited to one thousand dollars (\$1,000.00) as liquidated damages and not as a penalty.

**7.08 Limitation on Assignment** - This agreement may not be assigned, transferred or sold by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

**7.09 Representation of Authority** - The undersigned represents that he/she is the client or client's authorized duly authorized agent and has obtained all necessary permission to enter into this agreement and will indemnify contractor of all liability arising from a breach of this representation.

**7.10 Integration** - This agreement contains the entire agreement between the parties hereto with respect to the matters covered herein. It supersedes all prior agreements between the parties, whether oral or written and may only be changed by an agreement in writing. No other agreements, representations, or other oral or written matters, purportedly agreed to or represented by on behalf of contractor or any of its employees & agents, or contained in any promotional materials, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Client acknowledges that it is entering into this agreement solely on the basis of the representations contained herein.

**7.11 Notices** - Any communications between the parties hereto or notices provided herein to be given may be given by mailing them, postage prepaid, to client or contractor at the addresses first above written or to such other addresses as either party may in writing hereafter indicate.