

Full Terms & Conditions Of Engagement

Upon acceptance of a Scope of work from Weblicious Solutions (Designer), all clients are immediately bound by the terms and conditions detailed below.

DEFINITIONS

Agreement means the Proposal, Scope of work, Terms and Conditions and any other attached documents.

Project means the scope and purpose of the Client's identified usage of the work product as described in the Scope of Work.

Services means all services and the work product to be provided to Client by Designer as described and otherwise further defined in the Scope of work.

Final Deliverables means the final versions of Deliverables provided by Designer and accepted by Client.

Deliverables means the services and work product specified in the Project Proposal to be delivered by Designer to Client.

Client Content means all materials, writing, images or other creative content provided by Client used in preparing or creating the Deliverables.

Third Party Materials means proprietary third party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.

Designer Tools means all design tools developed and/or used by Designer in performing the Services, including pre-existing and newly developed software including source code, Web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements.

DESIGNER SERVICES

Designer shall perform the services listed the Scope of work according to the Project Timeline.

SCOPE OF WORK

A document submitted to client detailing services and/or the final deliverables.

COMPENSATION

Fees. Client agrees to pay Designer the fees listed in the Proposal and Scope of work, including all taxes.

Additional Costs: Pricing in the Proposal includes only Designer fees and anything else specifically included in the Proposal. Any other costs, such as hosting, photography (where not included in the Proposal), additional plugins, art and other will be paid by the Client.

PAYMENT

Unless special payment arrangements are made, the client must adhere to the payment schedule.

Payment Schedule: 50% deposit is required in full prior to commencing the Project. 50% balance is due in full EITHER on completion of the Development Build milestone OR after 28 days, whichever occurs first. Deposit is non-refundable.

Invoices: All invoices are payable within 7 days of receipt. Invoices shall list any expenses and additional costs as separate items.

Deposit: Deposits are non-refundable as work commences immediately on payment.

LATE PAYMENT

Late Fee: A monthly service fee of 1.5 percent is payable on all overdue balances.

Crediting Late Payments: Payments will be credited to late payments first, then to unpaid balances.

Collection Expenses: Client shall pay all collection or legal fees caused by late payments.

Withholding Delivery: Designer may withhold delivery and transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full.

Withholding License: All grants of any license to use or transfer ownership of any 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

Change Request: If Client wants to change the Scope of work, agreed design after acceptance of any of these, Client shall send Designer a written Change Order describing the requested changes in detail. Within 7 days of receiving a Change Order, Designer will respond with a statement proposing designer's availability, additional fees, changes to delivery dates, and any modification to the Terms and Conditions. Designers will evaluate each Change Order at its standard rate and charges.

Major Change: If Client requests are at or near 25 percent of the time required to produce Deliverables, or the value of the Scope of work, Designer shall be entitled to submit a new and separate Proposal to Client for written approval. Designer shall not begin work on the revised services until he receives a fully signed revised proposal and any additional fees.

Minor Change: If Client requests are not Major Changes, Client will be billed on a time and materials basis at Designers hourly rate of \$95 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.

Acceptance/Rejection: Client will have 7 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

A: Designer Delays: Designer shall use all reasonable efforts to meet the Work Plan and Milestones delivery schedule. Designer may extend the due date for any Deliverable by giving written notice via email to Client.

B: Client 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.

C: General Delays: 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 via email, 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

Testing: Designer will test and correct Deliverables using commercially reasonable efforts before providing Deliverables to Client.

Approval Periods: Client shall, within 3 business days after receiving each Deliverable, notify Designer in writing of any failure to comply with the specification of the Proposal and Scope of Work or of any other objections, corrections or changes required. Designer shall, within 7 business days of receiving Client's notification, correct and submit a revised Deliverable to Client. Client shall, within 3 business days of receiving a revised Deliverable, either approve the corrected version or make further changes. If after 3 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.

CLIENT RESPONSIBILITIES

Client acknowledges that they are responsible for performing the following in a reasonable and timely manner:

- a.) Provide Client Content in a form suitable for use in the Deliverables without further preparation by Designer, unless otherwise specified in the scope of work;
- b.) Proofread all Deliverables. Client will be charged for correcting errors after the acceptance of any Deliverable;
- c.) Make decisions regarding other parties.

Client acknowledges that they are responsible for:

- a.) respecting deadlines
- b.) responding to any queries Designer has during the preparation of Deliverables, as well as submitting further information and feedback, within 48hrs of receiving requests from the Designer.

Failure to respond in agreed timeframes, may result in Client's project being

pushed to the back of the Designers work queue, or even delivered without missing information and based on the Designer's best judgement.

ACCREDITATION AND PROMOTION

Accreditation: Designer shall be entitled to place accreditation, as a hyperlink or otherwise, in the form, size and location as incorporated by Designer in the Deliverables on each page of the Final Deliverables.

Promotion: 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.

Promotional Approval: Either party, subject to the other's reasonable approval, may describe its role in the Project on its website and in other promotional and marketing materials, and, if not expressly objected to, include a link to the other party's website.

CONFIDENTIAL INFORMATION

Client's "Confidential Information" includes information that Designer should reasonably believe to be confidential. Designer's "Confidential Information" includes the source code of any Designer Tools.

All material considered confidential by either party shall be designated as confidential.

Confidential Information shall not be disclosed to third parties and shall only be 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

Independent Contractor: 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.

Design Agents. Designer shall be allowed to use third party's as independent contractors in connection with the Services ("Design Agents").

Designer shall remain fully responsible for Design Agents' compliance with this Agreement.

No Exclusivity. 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 Designer, and Designer shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Designer.

REPRESENTATIONS AND WARRANTIES

By Client. Client represents and warrants to Designer that:

- a.) To the best of Client's knowledge, use of the Client Content does not infringe the rights of any third party;
- b.) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials;
- c.) Client will obtain all necessary and appropriate rights and licenses to grant license to Designer to use Third Party Materials.

By Designer: Designer represents and warranty to Client that:

- a.) Designer will provide the Services identified in the Agreement in a professional and workmanlike manner;
- b.) Designer shall secure all necessary rights, title, and interest in and to the Final Deliverables, including Designer Tools, sufficient for Designer to grant the intellectual property rights provided in this Agreement;
- c.) To the best of Designer's knowledge, the Deliverables will not violate the rights of any third parties;
- d.) If Client or third parties modify the Deliverables or use the Deliverables outside of the scope or purpose of this Agreement, all representations and warranties of Designer shall be void.

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

By Client: 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 arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Designer shall promptly notify Client in writing of any third party claim or suit. Client shall have the right to fully control the defense and any settlement of such claim or suit.

By Developer: In the case of a third party lawsuit or proceeding based on a claim that Deliverables breach the third party's intellectual property rights, and it is determined that such infringement has occurred, Designer may at its own expense, replace any infringing content with non-infringing content.

Limitation of Liability. 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

Term: This agreement shall begin when the Proposal and Scope of work is accepted by the client either by email, electronic signature or physical signature, and shall continue until all Services are complete and delivered, or until the Agreement is Terminated.

Termination for Cause: Either party may terminate this agreement at any time, on 14 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 14 day period. Designer may terminate this agreement at any time for any reason.

Termination for Insolvency: 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.

Termination by Mutual Agreement: This agreement may be terminated by the mutual agreement of the parties.

Termination for Convenience: Either party may terminate this agreement at any time and for any reason on 14 days prior written notice to the other party. If Client terminates the Agreement under this section, Designer shall, at Clients reasonable discretion, complete any work assigned or scheduled during the notice period in accordance with the terms and conditions of this Agreement.

Termination Fees: 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.

Intellectual Property: If Client terminates and on full payment of compensation, Designer grants Client right and title as provided by this Agreement with respect to those Deliverables provided and accepted by Client as of the date of termination.

Confidential Information: On 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.) all rights and obligations regarding Confidential Information shall survive.

INTELLECTUAL PROPERTY

Ownership: Designer retains ownership of all works until such time as full payment has been received and ownership transferred. Any attempt to use, promote, sell or distribute works prior to transfer of ownership may result in legal action being taken.

RIGHTS TO FINAL ART

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.

RIGHTS TO DELIVERABLES OTHER THAN FINAL ART

Client Content: Client Content is the exclusive property of the Client. Client grants Designer a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the Client Content solely in connection with Designer's performance of the Services and limited promotional uses of the Deliverables as authorized in this Agreement.

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.

Designer Tools: 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.

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 shall constitute additional use and will be billed accordingly.

DISPUTE RESOLUTION

Negotiation: Parties agree to attempt to resolve any dispute by negotiation between the parties.

Arbitration/Mediation: 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.

Litigation: In all other circumstances, the parties specifically consent to the local, state and federal courts located in the state of Victoria. The parties waive any jurisdictional or venue defenses available to them and further consent to service of process by mail.

Legal Fees: The prevailing party shall be entitled to recover its attorneys' fees and costs in any dispute resolved by binding arbitration or litigation.

GENERAL

Modification/Waiver: 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.

Notices: All notices under this Agreement shall be given in writing either by:
a.) 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, on confirmation of receipt.

No Assignment: Rights or obligations under this Agreement shall not be transferred, assigned or encumbered without the prior written consent of the other party.

Governing Law: This Agreement shall be governed by the law of Australia.

Severability: 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: 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.

Complete Agreement: This Agreement is the entire understanding of the parties and supersedes all prior understandings and documents relating to the subject matter of this Agreement.