

## 1. DEFINITIONS

As used herein and throughout this Agreement:

- 1.1 *Agreement* means the entire content of this Basic Terms and Conditions document, the Estimate document(s), Schedule A, together with any other Supplements designated below, together with any exhibits, schedules or attachments hereto.
- 1.2 *Client Content* means all materials, information, photography, writings, and other creative content provided by Client for use in the preparation and/or incorporation in the Project and Final Work Product.
- 1.3 *Final Work Product* 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 Work Product, including and by way of example, without limitation, any and all visual designs, 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.
- 1.4 *Preliminary Works* means all artwork including, without limitation, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by Designer and which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Work Product.
- 1.5 *Project* means the scope and purpose of Client's identified usage of work product as described in the Estimate.
- 1.6 *Services* means all services and the work product to be provided to Client by Designer as described and otherwise further defined in the Estimate.
- 1.7 *Third Party Materials* mean proprietary third party materials which are incorporated into the Final Work Product, including without limitation, stock photography or illustration.
- 1.8 *Trademarks* means trade names, words, symbols, designs, logos or other devices or designs used in the Final Work Product to designate the origin or source of the goods or services of Client.

## 2. ESTIMATE

The terms of the Estimate shall be effective for thirty (30) days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Estimate, together with any related terms and conditions and deliverables, may be subject to amendment, change or substitution.

## 3. FEES AND EXPENSES

- 3.1 *Fees.* In consideration of the Services to be performed by Designer, Client shall pay to Designer fees and applicable sales tax in performance of the Services in the amounts and as set forth in the Estimate and final invoice.
- 3.2 *Expenses.* **The Project initial estimate includes Designer's fee only.** Client shall pay to Designer all out of pocket expenses, including but not limited to printing or otherwise and third party expenses (including but not limited photography fees, etc.) and applicable sale tax, incurred in the performance of the Services.
- 3.3 *Initial Deposit and Invoicing.*
  - (a) *Initial Deposit.* A nonrefundable deposit of 50% of the Estimate is due upon execution of the Agreement.
  - (b) *Final Invoice:* A final invoice will be issued upon project completion. Such final invoice to include any and all expenses and third-party expenses incurred by the Designer in performing the Services. Payment of the Final Invoice is due upon receipt. Designer reserves the right to withhold delivery and transfer of ownership of the Final Work Product or any other current work if the Final Invoice remains due and owing. In the event the Designer agrees to receive payment of the Final Invoice at a date later than project completion, a monthly service charge of 2% per month, or 24% per annum, shall be

payable on the overdue balance. Client shall be responsible for payment of any and all collection and/or legal fees incurred as a result of default and/or delinquent payment. Designer reserves the right to withhold delivery and transfer of ownership of the Final Work Product or any other current work if the Final Invoice remains due and owing.

3.4 *Refunds* **There are no refunds** on services that include custom digital media design work or technical assistance. Client has every opportunity during the project to provide feedback and request changes if they are not satisfied with the direction the project is taking (see point 4 below for additional changes).

## 4. CHANGES

Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at Designer's standard hourly rate of \$110 per hour. Designer may extend or modify any delivery schedule or deadlines as may be required by such Changes.

## 5. TIMING AND SCHEDULING

Client acknowledges and agrees that Designer'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 and/or instructions pursuant to the Estimate. Any delays in Client's performance or Changes in the Services requested by Client may delay delivery of the Final Work Product. Any such delay caused by Client shall not constitute a breach of any term, condition or Designer's obligations under this Agreement. The Project shall be scheduled upon receipt of the Initial Deposit and an executed copy of this Agreement. The scope of the Project and scheduled Milestones shall be entered into Basecamp (project management software).

## 6. CLIENT RESPONSIBILITIES

Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner: Client shall be emailed a prompt when content or feedback is required by Designer from Client in the performance of the Services. A deadline for such required feedback shall be included in the email. Items not received by the deadlines will result in a halt of any further project work. **Outstanding items shall form the subject of a new Agreement with new quotes and booking times. If the client requires the project finished as a "rush job" because of a delay on their part and is able to provide the required deliverables, a 50% surcharge of the remaining balance will be added to the final invoice if Fetching Finn is able to accommodate the "rush" timeline.** Fetching Finn will not be held responsible for delays in meeting deadlines if supporting materials have not been provided in the agreed upon timescales.

6.1 Furthermore, Client shall be responsible for:

- (a) coordination of any decision-making with parties other than the Designer;
- (b) provision of Client Content required to perform the Services in a form suitable for reproduction or incorporation into the Final Work Product without further preparation, unless otherwise expressly provided in the Estimate; and
- (c) final proofreading and in the event that Client has approved the work product but errors, such as, by way of example, without limitation, typographic errors or misspellings, remain in the finished product, Client shall incur the cost of correcting such errors.

## 7. RELATIONSHIP OF THE PARTIES

7.1 *Non-Solicitation.* During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any employee or agent of Designer,

whether or not said person has been assigned to perform tasks under this Agreement.

**7.2 Non-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 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.

## 8. WARRANTIES AND REPRESENTATIONS

**8.1 By Client.** Client represents, warrants and covenants to Designer 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 Final Work Product 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.
- (d) Client shall comply with all laws and regulations as they relate to the Services and Project.

**8.2 By Designer.** Designer hereby represents, warrants and covenants to Client that

- (a) except for Third Party Materials and Client Content, the Project shall be the original work of Designer and/or agents
- (b) to the best of Designer's knowledge, the Final Work Product provided by Designer and Designer's subcontractors does not infringe the rights of any party, and use of same in connection with the Final Work Product will not violate the rights of any third parties. In the event Client or third parties use the Final Work Product outside of the scope for which it was intended or for any purpose not identified in the Estimate or this Agreement, or contrary to the terms and conditions noted herein, all representations and warranties of Designer 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 AND/OR FINAL ART.

## 9. INDEMNIFICATION/LIABILITY

**9.1 By Client.** Client agrees to indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses 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. Under such circumstances Designer shall promptly notify Client in writing of any claim or suit. Client shall have sole control of the defense and all related settlement negotiations; and Designer shall provide Client with commercially reasonable assistance, information and authority necessary to perform Client's obligations under this section. Client will reimburse the reasonable out-of-pocket expenses incurred by Designer in providing such assistance.

**9.2 By Designer.** Subject to the terms, conditions, express representations and warranties provided in this Agreement, Designer agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses or expenses arising

out of any finding of fact which is inconsistent with Designer's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of Client provided that Client promptly notifies Designer in writing of the claim. Designer shall have sole control of the defense and all related settlement negotiations. Client shall provide Designer with the assistance, information and authority necessary to perform Designer's obligations under this section. Notwithstanding the foregoing, Designer shall have no obligation to defend or otherwise indemnify Client for any claim or adverse finding of fact arising out of or due to Client Content, any unauthorized content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Designer.

**9.3 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, 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.

## 10. GENERAL

**10.1 Force Majeure.** Designer shall not be deemed in breach of this Agreement if Designer is unable to complete the Services or any portion thereof by reason of fire, earthquake, labour dispute, act of God or public enemy, death, illness or incapacity of Designer or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Designer's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Designer shall give notice to Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

**10.2 Governing Law and Dispute Resolution.** The formation, construction, performance and enforcement of this Agreement shall be in accordance with the laws of Canada and the province of Alberta without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, the prevailing party in any dispute resolved by litigation shall be entitled to recover its solicitor's fees and costs. In all other circumstances, the parties specifically consent to the local, provincial and federal courts located in the province of Alberta.

## Intellectual Property Provisions

### 1. RIGHTS TO CONTENT OTHER THAN FINAL PROJECT

**1.1 Client Content.** Client Content, including all pre-existing Trademarks, shall remain the sole property of Client or its respective suppliers, and Client or its suppliers shall be the sole owner of all rights in connection therewith. Client hereby grants to Designer a nonexclusive, non-transferable 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 Project as authorized in this Agreement.

**1.2 Third Party Materials.** All Third Party Materials are the exclusive property of their respective owners. Designer shall inform Client of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Final Work Product. Under such circumstances Designer shall inform Client of any need to license, at Client's expense, and unless otherwise provided for by Client, Client shall obtain the license(s) necessary to permit Client's use of the Third Party Materials consistent with the usage rights granted herein. In the event Client fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of Third Party Materials, Client hereby indemnifies, saves and holds harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of Client's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Final Work Product.

**1.3 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 and all rights in and to any Preliminary Works shall remain the exclusive property of Designer.

**1.4 Trademarks.** Upon completion of the Services and expressly conditioned upon full payment of all fees, costs and out-of-pocket expenses due, Designer assigns to Client all ownership rights, including any copyrights, in and to any artworks or designs comprising the works created by Designer for use by Client as a Trademark. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment. Client shall have sole responsibility for ensuring that any proposed trademarks or Final Deliverables intended to be a Trademark are available for use in commerce and federal registration and do not otherwise infringe the rights of any third party. Client hereby indemnifies, saves and holds harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by any third party alleging any infringement arising out of Client's use and/or failure to obtain rights to use or use of the Trademark.

## Interactive-Specific Terms and Conditions

### 1. SUPPORT SERVICES

**1.1 Warranty Period.** "Support Services" means commercially reasonable technical support and assistance to maintain and update the Final Work Product, including correcting any errors or Deficiencies, but shall not include the development of enhancements to the Final Work Product or other services outside the scope of the Estimate. During the first three (3) months following expiration of this Agreement ("Warranty Period"), if any, Designer shall provide up to three (3) hours of Support Services at no additional cost to Client. Additional time shall be billed at Designer's regular hourly rate, then in effect upon the date of the request for additional support.

### 2. ADDITIONAL WARRANTIES AND REPRESENTATIONS

**2.1 Deficiencies.** Designer represents and warrants that the Final Work Product will be free from Deficiencies. For the purposes of this Agreement, "Deficiency" shall mean a failure to comply with the specifications set forth in the Estimate in any material respect, but shall not include any problems caused by Client Content, modifications, alterations or changes made to Final Work Product by Client or any third party after delivery by Designer, or the interaction of Final Work Product with third party applications.

**2.2 Designer Tools.** Subject to the representations and warranties of the Client in connection with the materials supplied by Client, Designer represents and warrants that, to the best of Designer's knowledge, the Designer Tools do not knowingly infringe the rights of any third party, and use of same in connection with the Project will not knowingly violate the rights of any third parties except to the extent that such violations are caused by Client Content, or the modification of, or use of the Final Work Product in combination with materials or equipment outside the scope of the applicable specifications, by Client or third parties.

### 3. COMPLIANCE WITH LAWS

Designer shall use commercially reasonable efforts to ensure that all Final Deliverables shall be designed to comply with the known relevant rules and regulations. Client, upon acceptance of the Deliverables, shall be responsible for conformance with all laws relating to the transfer of software and technology.

By their execution below, the parties hereto have agreed to all terms and conditions of this Agreement effective as of the last date of signature below, and each signatory represents that it has the full authority to enter into this Agreement and to bind her/his respective party to all of the terms and conditions herein.

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## FETCHING FINN INC.

Nikki Takahashi

#223 100 Quarry Villas SE, Calgary, AB, T2C 5L2

403-614-4055

nikki@fetchingfinn.com