

# WEBSITE DESIGN & MAINTENANCE ORDER FORM (Front)

[Designer's Letterhead]



*This job order form is a sample of a possible contract for website development and maintenance. Since the field is changing very rapidly, artists should view this as a model and amend it to fit their particular circumstances. Remove all language in italics before using this form.*

## CLIENT

Date

Commissioned by

Purchase Order Number

Job Number

## DESCRIPTION OF ASSIGNMENT

**Services:** Designer shall design a website for Client consisting of the following components (the "Deliverables"):

**Timing:** Designer will promptly give written notice in the event that Designer reasonably expects any delay in completing any aspect of the Project. Client acknowledges and agrees that Designer's ability to meet deadlines depends upon Client's prompt performance of its obligations to provide materials and approvals and that any delays in Client's performance or changes in the Services requested by Client may delay delivery of the Deliverables. Any such delays caused by Client shall not constitute a breach of Designer's obligations under this Agreement.

Unless otherwise agreed in writing, Designer shall deliver all Deliverables to Client electronically.

## Description of Materials to Be Supplied by Client:

Date Due:

## RIGHTS GRANTED

**Client Content:** All proprietary information and all creative content provided by Client to Designer for incorporation in the Deliverables ("Client Content") shall remain the sole property of Client and its assigns, and Client and its assigns shall be the sole owner of all trade secrets, patents, copyrights, and other rights in connection therewith. Client hereby grants to 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.

**Designer Creative Content:** For the purposes of this Agreement, "Designer Creative Content" shall mean all creative content developed by Designer, or commissioned by Designer exclusively for the Project, and incorporated in the Deliverables, including without limitation all visual elements, graphic design, illustration, photography, animation, sounds, typographic treatments and text, and all modifications to Client Content developed by Designer. Designer hereby grants to Client the exclusive, perpetual, and worldwide right to use, reproduce, modify, and display the Designer Creative Content solely in connection with the Project. As defined and used herein and throughout this Agreement, Designer Creative Content specifically excludes all Designer Tools (defined below).

**Third Party Materials:** Third party materials that are incorporated into the Deliverables, including without limitation standardized application tools, web authoring tools and other software, and stock photography (collectively, "Third Party Materials") shall be owned by the respective third parties.

**Designer Tools:** All design tools developed and utilized by Designer in performing the Services, including without limitation pre-existing and newly developed web authoring tools, application tools and other software, and general non-copyrightable concepts such as website architecture, layout, navigational and functional elements (collectively, "Designer Tools"), shall be owned solely by Designer. Designer hereby grants to Client a nonexclusive, nontransferable (other than the right to sublicense such uses to Client's web hosting or Internet service providers), perpetual, worldwide license to use, display, and modify the Designer Tools solely in connection with the Client's web site.

Any grant of rights is conditional upon receipt of full payment. Upon receipt of full payment, Designer shall deliver digital files necessary to enable Client's usage rights granted herein. Designer retains the rights to display all work created by Designer for this project, including preliminary designs and final Deliverables, in Designer's portfolios, including in print and online, and to submit such work to design periodicals and competitions, provided that no confidential information is revealed thereby.

# WEBSITE DESIGN & MAINTENANCE ORDER FORM (Back)

## PRODUCTION SCHEDULE

(Including milestones, dates due, and appropriate fees.)

Milestone	Due Date	Payment upon Acceptance
Contract Signing	_____	\$ _____
Delivery of Website Design	_____	\$ _____
Delivery of Beta Version	_____	\$ _____
Delivery of Final Version (includes return of source materials to Client)	_____	\$ _____
Acceptance of Final Version	_____	\$ _____
Total	_____	\$ _____

**Bonus:** Client agrees to pay Designer a bonus of \$ \_\_\_\_\_ payable to the Designer in the event an acceptable Final Version of the Website is delivered to the Client prior to [date] \_\_\_\_\_.

## TERMS

### 1. Time for Payment

Payment is due at each milestone upon the Client's acceptance of the Deliverables. All invoices are payable within 30 days of receipt. A 1 1/2% monthly service charge is payable on all overdue balances. The grant of any license or right of copyright is conditioned on receipt of full payment.

### 2. Default in Payment

The Client shall assume responsibility for all collection of legal fees necessitated by default in payment.

### 3. Estimates

If this form is used for an estimate or assignment confirmation, the fees and expenses shown are minimum estimates only. Final fees and expenses shall be shown when invoice is rendered. The Client's approval shall be obtained for any increases in fees or expenses that exceed the original estimate by 10% or more.

### 4. Expenses

The Client shall reimburse the Designer for all expenses arising from this assignment, including the payment of any sales taxes due on this assignment, and shall advance \$ \_\_\_\_\_ to the Designer for payment of said expenses.

### 5. Internet Access

Access to Internet will be provided by a separate Internet Service Provider (ISP) to be contracted by the Client and who will not be party to this Agreement.

### 6. Progress Reports

The Designer shall contact or meet with the Client on a mutually acceptable schedule to report all tasks completed, problems encountered, and recommended changes relating to the development and testing of the website. The Designer shall inform the Client promptly by telephone upon discovery of any event or problem that may delay the development of the work significantly.

### 7. Third Party Licenses

Designer shall inform Client of all Third Party Materials that Client may need to license at Client's own expense, and unless otherwise arranged by Client, Designer shall obtain a license for Client to use the Third Party Materials. Client shall be responsible for executing and paying for such licenses.

### 8. Changes

The Client shall be responsible for making additional payments for changes beyond the original assignment requested by the Client. However, no additional payment shall be made for changes required to conform to the original assignment description. The Client shall offer the Designer the first opportunity to make any changes.

### 9. Testing and Acceptance Procedures

The Designer will make every good-faith effort to test all Deliverables thoroughly and make all necessary corrections as a result of such testing prior to handing over the Deliverables to the Client. Upon receipt of the Deliverables, the Client shall either accept the Deliverable and make the milestone payment set forth herein or provide the Designer with written notice of any corrections to be made and a suggested date for completion, which should be mutually acceptable to both the Designer and the Client. The Designer shall designate [name] \_\_\_\_\_ and the Client shall designate [name] \_\_\_\_\_ as the only designated persons who will send and accept all Deliverables and receive and make all communications between the Designer and the Client. Neither party shall have any obligation to consider for approval or respond to materials submitted other than through the designated persons listed above. Each party has the right to change its designated person upon \_\_\_\_\_ day(s) notice to the other.

### 10. Website Maintenance

The Designer agrees to provide the Client with reasonable technical support and assistance to maintain and update the website on the Internet during the Warranty Period of [dates] \_\_\_\_\_ at no cost to the Client. Such assistance shall not exceed \_\_\_\_\_ hours per calendar month. After the expiration of the Warranty Period, the Designer agrees to provide the Client with reasonable technical support and assistance to maintain and update the website on the Internet for an annual fee of \$ \_\_\_\_\_ for a period of \_\_\_\_\_ years after the last day of the Warranty Period payable 30 days prior to the commencement date of each year of the Maintenance Period. Such maintenance shall include correcting any errors or any failure of the website to conform to the specifications. Maintenance shall not include the development of enhancements to the originally contracted project.

### 11. Enhancements

Under the maintenance agreement, if the Client wishes to modify the website, the Designer shall be given first option to provide a bid to perform such enhancements.

### 12. Confidential Information

The Designer acknowledges and agrees that the source materials and technical and marketing plans or other sensitive business information, as specified by the Client, including all materials containing said information, that are supplied by the Client to the Designer or developed by the Designer in the

# WEBSITE DESIGN & MAINTENANCE ORDER FORM (Second Sheet)

course of developing the website are to be considered confidential information and shall not be disclosed to the public by Designer without the Client's prior written permission. Information shall not be considered confidential if it is already publicly known through no act of the Designer.

### 13. Warranties and Representations.

**By Client.** Client represents, warrants, and covenants to Designer that (i) Client owns all right, title, and interest in, or has full and sufficient authority to use in the manner contemplated in this Agreement, all of the Client Content, (ii) to the best of Client's knowledge, the Client Content does not infringe the rights of any party, and use of the Client Content in connection with the Project does not and will not violate the rights of any third parties, including without limitation trade secrets, trademarks, publicity, privacy, copyright, and patents, (iii) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, (iv) Client shall comply with all applicable foreign, federal, state, and local laws and regulations as they relate to the Services and Deliverables, including but not limited to, all advertising laws and regulations, consumer protection laws, and any laws or regulations relating to web sites and electronic commerce. **By Designer.** Designer represents, warrants, and covenants to Client that: (i) Designer shall perform the Services in a professional and workmanlike manner and in accordance with all reasonable professional standards for similar services, and (ii) the Deliverables will be free from Deficiencies. "Deficiency" shall mean a failure to comply with the Specifications in any material respect, but shall not include any problems caused by Client Content, modifications, alterations or changes made to Deliverables by Client or any third party after delivery by Designer, or the interaction of Deliverables with third party applications such as web browsers other than those specified in the Project Proposal. The parties acknowledge that Client's sole remedy and Designer's sole liability for a breach of this Section 13 (ii) is for Designer to correct any Deficiency identified within thirty (30) days of Client's receipt of the final Deliverables. In the event that a Deficiency is caused by Third Party Materials, Designer's sole obligation shall be to substitute alternative Third Party Materials.

Designer further represents, warrants, and covenants to Client that (i) except for Third Party Materials and Client Content, the Deliverables shall be the original work of Designer or its independent contractors, (ii) if the Deliverables include the work of independent contractors commissioned for the Project by Designer, Designer shall have agreements in place with such independent contractors which contain provisions assigning all necessary rights, title, and interest in and to the Deliverables sufficient for Designer to grant the ownership interests and licenses provided in this Agreement, and (iii) to the best of Designer's knowledge, the Designer Creative Content and the Designer Tools do not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties, including without limitation trade secrets, trademarks, publicity, privacy, copyright, and patents, except to the extent that such violations are caused by Client Content, or the modification of, or use of the Deliverables in combination with materials or equipment outside the scope of the applicable Specifications, by Client or third parties.

**Except for the express warranties stated above, Designer makes no warranties whatsoever. Designer explicitly disclaims any other warranties or any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose.**

**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 which is inconsistent with Client's representations made herein, except to the extent such damages, liabilities, costs, losses, or expenses arise directly as a result of gross negligence or willful misconduct of Designer; provided that (i) Designer promptly notifies Client in writing of the claim; (ii) Client has sole control of the defense and all related settlement negotiations; and (iii) Designer provides Client with the 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.

**By Designer.** Subject to the limitations on warranties and liability provided herein, Designer agrees to indemnify, save, and hold harmless Client from any and all damages, liabilities, costs, losses, or expenses arising out of any claim, demand, or action by a third party which is inconsistent with Designer's representations made herein, except to the extent such damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or willful misconduct of Client; provided that (i) Client promptly notifies Designer in writing of the claim; (ii) Designer has sole control of the defense and all related settlement negotiations; and (iii) Client provides Designer with the assistance, information, and authority necessary to perform Designer's obligations under this section. Designer will reimburse the reasonable out-of-pocket expenses incurred by Client in providing such assistance. Notwithstanding the foregoing, Designer shall have no obligation to defend or indemnify Client for any infringement claim of any kind to the extent such claim is based on unauthorized modification of the Deliverables, arises from Client's failure to use updated or modified Deliverables provided by Designer, or arises from Designer's inclusion or use of Client Content.

### 15. Limitation of Liability

**Client agrees that it shall not hold the Designer or his/her agents or employees liable for any incidental or consequential damages that arise from the Designer's failure to perform any aspect of the project in a timely manner, regardless of whether such failure was caused by intentional or negligent acts or omissions of the Designer or a third party. Furthermore, the Designer disclaims all implied warranties, including the warranty of merchantability and fitness for a particular purpose. Client shall be responsible for all compliance with laws or government rules or regulations applicable to Client's final product(s).**

To the extent the Deliverables include any word, symbols, logos, or other content used to designate Client as the source of goods or services ("Trademarks"), Client shall have sole responsibility for ensuring that Trademarks do not infringe the rights of third parties, and Client shall 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 alleging trademark infringement, or arising out of Client's failure to obtain trademark clearance or permissions, for use of Trademarks.

The maximum liability of Designer to Client for damages for any and all causes whatsoever, and Client's maximum remedy, regardless of the form of action, shall be limited to an amount equal to the total fees paid by Client to Designer hereunder. In no event shall Designer be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages arising out of or related to the Services, even if Designer has been advised of the possibility of such damages.

### 16. Dispute Resolution

Any disputes in excess of \$ \_\_\_\_\_ [maximum limit for small-claims court] arising out of this Agreement shall be submitted to mediation in accordance with the rules of \_\_\_\_\_ [name of local lawyers for the arts mediation program]. The prevailing party in any dispute resolved by litigation shall be entitled to recover its attorney's fees and costs, provided that party initiated or participated in mediation as set forth herein.

### 17. Acceptance of Terms

The signature of both parties shall evidence acceptance of these terms.

### CONSENTED AND AGREED TO:

\_\_\_\_\_  
Designer's signature/date

\_\_\_\_\_  
Authorized signature/date

\_\_\_\_\_  
Client's name and title