

Statement of Work and Letter of Agreement

This agreement is made the _____ day of _____ (year) _____ by and between:

<i>Client</i>	AND	<i>Artist</i>
Name: _____		Name: _____
Address: _____		Address: _____
Phone: _____		Phone: _____
E-Mail: _____		E-Mail: _____

The parties agree as follows:

The Project:

Detailed Description

Deliverables

Time Table / Deadline

Reproduction Terms

Payment Terms

Terms and Conditions

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year written above.

Signed

Artist

Date

Client

Date

Non-Disclosure Agreement

This agreement is made the _____ day of _____ (year) _____ by and between:

<i>Client</i>	AND	<i>Artist</i>
Name: _____		Name: _____
Address: _____		Address: _____
Phone: _____		Phone: _____
E-Mail: _____		E-Mail: _____

The Project:

General Provisions

**Specific Needs
(but not limited to the following)**

1. In consideration of the disclosure of Proprietary Information by the Disclosing Party, the Receiving Party hereby agrees: (i) to hold the Proprietary Information in strict confidence and to take all reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials), (ii) not to disclose any such Proprietary Information or any information derived there from to any third person, (iii) not to make any use whatsoever at any time of such Proprietary Information except to evaluate internally its relationship with the Disclosing Party, and (iv) not to copy or reverse engineer any such Proprietary Information. The Receiving Party shall procure that its employees, agents and sub-contractors to whom Proprietary Information is disclosed or who have access to Proprietary Information sign a nondisclosure or similar agreement in content substantially similar to this Agreement
2. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information after five years following the disclosure thereof or any information that the Receiving Party can document (i) is or becomes (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public, or (ii) was in its possession or known by it prior to receipt from the Disclosing Party as evidenced in writing, except to the extent that such information was unlawfully appropriated, or (iii) was rightfully disclosed to it by a third party, or (iv) was independently developed without use of any Proprietary Information of the Disclosing Party. The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses diligent reasonable efforts to limit disclosure and has allowed the Disclosing Party to seek a protective order.
3. Immediately upon the written request by the Disclosing Party at any time, the Receiving Party will return to the Disclosing Party all Proprietary Information and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof, save that where such Proprietary Information is a form incapable of return or has been copied or transcribed into another document, it shall be destroyed or erased, as appropriate.
4. The Receiving Party understands that nothing herein (i) requires the disclosure of any Proprietary Information or (ii) requires the Disclosing Party to proceed with any transaction or relationship.
5. The Receiving Party further acknowledges and agrees that no representation or warranty, express or implied, is or will be made, and no responsibility or liability is or will be accepted by the Disclosing Party, or by any of its respective directors, officers, employees, agents or advisers, as to, or in relation to, the accuracy of completeness of any Proprietary Information made available to the Receiving Party or its advisers; it is responsible for making its own evaluation of such Proprietary Information.
6. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. If any part, term or provision of this Agreement is held to be illegal or unenforceable neither the validity, nor enforceability of the remainder of this Agreement shall be affected. Neither Party shall assign or transfer all or any part of its rights under this Agreement without the consent of the other Party. This Agreement may not be amended for any other reason without the prior written agreement of both Parties. This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof unless any representation or warranty made about this Agreement was made fraudulently and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto.
7. This Agreement shall be governed by the laws of the jurisdiction in which the Disclosing Party is located (or if the Disclosing Party is based in more than one country, the country in which its headquarters are located) (the "Territory") and the parties agree to submit disputes arising out of or in connection with this Agreement to the non-exclusive of the courts in the Territory.

Signed

Artist

Date

Client

Date

Terms & Conditions Addendum

_____ Professional Standard.

Deliverables. Artist will provide the services identified in the Statement of Work. Artist will provide these services in a professional manner, and in accordance with applicable professional standards. Artist will provide its Deliverables to the Client in Adobe Postscript (PDF) and JPG formats for hi resolution digital printing. If the Client would like its deliverables in a specific file format, the Client must request to have the format included in the Statement of Work and Letter of Agreement Section. The professional design files will not be provided unless requested or are specified as project deliverables in the Statement of Work and Letter of Agreement Section. If the client desires the professional design production formats (examples Adobe Creative Suite files such as Photoshop (.psd), Illustrator (.ai) and Indesign (.indd) and they are not specified in the deliverables section the Client and Artist will renegotiate a new contract for these files. The Client understands that particular software and expertise to utilize and access the design files.

_____ Change Request

A "Change Request" is any request for work outside the scope of the Statement of Work and Letter of Agreement Section.

If such a request is made, the Artist will notify the Client that it is a Change Request. If the Client still wants to proceed with the Change Request, the Artist will bill the work on a time and materials basis, at the Designer's standard hourly rate of \$100/hr. The Artist may also extend its delivery schedule of the deliverables to reflect the requests made in the "Change Request".

If the Change Request alters the scope of the project by more than 20%, the Artist may submit a new proposal to the Client.

_____ Payment

Invoice. The Artist will invoice the Client according to the Statement of Work and Letter of Agreement Section. Prior to any creative production on the project the client will pay a %50 non refundable deposit. The remainder of the balance is due at the completion of the project. Client shall pay all invoices within 30 days of receipt of notice.

Expenses. Fees are specified in the initial invoice. In the event that additional creative, production and or other services are needed for this project, the Designer's fees may apply. The client will be given proper and professional notice in this event and prior to the Artist starting or completing work for this stage of this project. In this event the Client will be invoiced for Designer's expenses. Designer's travel and lodging expenses will be invoiced to the Client without markup. Meal expenses will not be invoiced to the Client at all. Other Expenses incurred by the Artist in performing services to the Client will be invoiced to Client at Designer's standard mark-up of 20%. Other Expenses include, without limitation, postage, shipping, models, presentation materials, photocopies, equipment rental, photographer's costs and fees, photography and/or artwork licenses, prototype production costs, talent fees, music licenses, software licenses, online access, Software as a Service, and hosting fees.

Taxes. Client is responsible for paying all applicable taxes, including sales, use and value added taxes.

Late Payment. Overdue balances may be charged a monthly service fee of 1.5% (or the greatest amount allowed by law).

_____ Delivery

Timeframe. Project deadlines and time frame are specified in the Statement of Work and Letter of Agreement Section. The Artist will use commercially reasonable efforts to perform the Services within the schedule outlined in the Statement of Work and Letter of Agreement Section. Designer's delivery timeframe depends upon the Client's prompt response to any questions or requests for Client materials.

Artist Agents. The Artist may hire third party designers or service providers ("Design Agents") as independent contractors. The Artist is responsible for Design Agents' compliance with this Agreement.

Testing & Acceptance. The Artist shall use commercially reasonable efforts to test Deliverables before providing them to the Client.

For Illustration Projects the Artist will provide the Client with print and digital mock ups.

For Comic Book Projects the Client can request changes or modifications/REVISIONS up to 3x and no more, free of charge. If at which point any additional revisions may be requested, will be a charge of \$25 per request. A maximum of 5 revisions can be allowed. Also, the payment must be pay within 2 weeks of revision approved. These charges are separate from the original agreed upon price and scope. As such the timeline and milestone must be readjusted to fit and match the previously agreed upon deadlines. The Client must present stamp of approval to Artist that the work was accepted by the client as completed, to continue the process in case the agreed upon original timeline was interrupted and must be adjusted.

For Print Projects (examples booklets, magazines, brochures) the Artist will ensure that a working proper mock up sample is available for the client's review. The Artist will provide a print and digital version for the client. It is the Clients responsibility to provide the Artist with the proper sizes and specification of the final printing sizes.

For Web Design projects that include XHTML or HTML markup and CSS templates, the Artist will use HTML5 markup and CSS3 for styling. The Artist will test the markup and CSS in current versions of Safari, Chrome, Firefox, and Internet Explorer. The Artist will not test websites in older browsers, unless specifically identified in the Statement of Work and Letter of Agreement Section.

The Client shall promptly review all deliverables, and must notify the Artist of any failure to conform to the Statement of Work within 5 business days of receipt. If Artist does not receive a timely notification, the Deliverable will be deemed accepted. The Client's notification must clearly identify the problems with the Deliverable.

Client Responsibilities. Client must promptly: (a) coordinate any decision-making activities with 3rd parties; (b) provide Client Content in a form suitable for reproduction or incorporation into the Deliverables; and (c) proofread deliverables.

_____ **Client Rights in Deliverables.**

Reproduction for Print. The Client is authorized to reproduce the deliverables as specified in the Statement of Work and Letter of Agreement Section for the project's intended purposes. If the Client desires to use the deliverables for any other purpose than specified in the Statement of Work and Letter of Agreement Section the Client is gain the express permission of the Artist.

IP Assignment. Upon completion of the Services and full payment of all invoices, the Artist shall assign IP (intellectual property) rights to the Client. These IP rights include all ownership rights, including any copyrights, in any artwork, designs and software created by the Artist and incorporated specially for the project and or incorporated into a Final Deliverable, except as otherwise noted in this Agreement.

_____ **Artist Rights in Deliverables.**

Preliminary Works. Artist retains the rights to all Preliminary Works that are not incorporated into a Final Deliverable.

Artist Portfolio. Artist may display the Deliverables in the Designer's portfolios and websites, and in galleries, design periodicals and other exhibits for the purposes of professional recognition. Likewise, the Artist may publicly describe its role in the Project. The Artist shall give credit to the Client and reference to the Client's project when possible.

Credit. If the Artist incorporates credits into the Deliverables, any use of the Deliverables shall continue to bear the credits in the same form, size and location. Artist credits will not be incorporated into any logo designed for the Client.

Artist Tools. The Artist may incorporate certain Artist Tools into the Deliverables.

"Artist Tools" means all design tools developed or utilized by Artist in performing the Services, including without limitation: pre-existing and newly developed software, Web authoring tools, type fonts, and application tools.

In the event Artist Tools are incorporated into any Final Deliverable, then Artist grants Client a royalty-free, perpetual, worldwide, non-exclusive license to use the Artist Tools to the extent necessary to use the Final Deliverables. Artist retains all other rights in the Artist Tools.

Comic Book / Graphic Novel Original Artwork. The Artist is authorized to retain all original artwork and illustrations for comic book / graphic novel projects that were produced and created by the Artist as specified in the Statement of Work and Letter of Agreement Section. The Artist is entitled to resell these originals as the Artist sees fit if they created traditionally. If the project is created digitally the Artist is authorized to sell ONE signed digital print of the art work. The Artist must immediately inform the Client when this print is sold and to whom, after this one signed digital print is sold the Artist must obtain the express permission of the Client to sell any more printed signed prints. The Artist is authorized to sell 300 prints of the artwork he created for the project. Prints must be numbered. The Artist is authorized to redraw over these prints if so desired. The Artist is not authorized to sell any final production art for this project that he did not completely furnish, create, illustrate and or design.

Artist and Client Relationship

Non-Exclusive. This Agreement does not create an exclusive relationship. The Deliverables are generally a "work for hire" under Copyright Law and pertain to this project mentioned and described in the Statement of Work. The Client retains exclusive reproduction rights unless specified in the Statement of Work and Letter of Agreement Section. The Artist retains limited presentation rights as specified in the Statement of Work and Letter of Agreement Section. The client owns no copyright or ownership of any content or characters used in this project.

No Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Any such attempted assignment will be void *ab initio*. Consent is not required for a disposition of substantially all assets of the assigning party's business.

Confidential Information. Each party shall maintain Confidential Information in strict confidence, and shall not use Confidential Information except (a) as necessary to perform its obligations under the Agreement, or (b) as required by a court or governmental authority. Confidential Information includes proprietary technical and business information, Preliminary Works, and any other information marked "Confidential." The specific details of confidentiality are listed in the confidentiality agreement section.

Exception. Confidential Information does not include (a) any information that is in the public domain, (b) becomes publicly known through no fault of the receiving party, or (c) is otherwise known by the receiving party before obtaining access to it under this Agreement or properly received from a third party without an obligation of confidentiality.

No Solicitation

Three Year Non-Solicit. During the term of this Agreement, and for a period of Three Years after its expiration, Client shall not Solicit any of Designer's employees or Design Agents (collectively, "Artist Employee"). "Solicit" is defined to include: solicit, recruit, engage, or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire, or any other basis.

Termination

Discretionary Termination, Upon Notice. Either party may terminate this agreement in its business discretion upon sufficient advance notice. The amount of notice required is 1/4 of the estimated project duration. For example, if the Statement of Work estimates the services will take 80 days from kick-off to final delivery, advance notice of at least 20 days will be sufficient for discretionary termination.

Discretionary Termination by Client. IF: Client uses this discretionary termination provision, THEN: Artist will retain all payments already made as of the notification date, and Client shall pay Artist (a) for all expenses incurred as of the date of notification of termination, (b) an early termination fee equal to 25% of the total project fee, and (c) No IP rights will be transferred, no artworks will be provided. The Artist retains rights to the artwork as well as original print sales and presentation rights as specified in the designer's rights section.

Discretionary Termination by Artist. IF: Artist uses this discretionary termination provision, THEN: (a) Artist will retain (or, if not paid in advance, will be due) all costs already incurred and a prorated portion of the fees for services performed up to the termination date, (b) Artist will assist Client in transferring the project to a new Artist, and (c) Artist will assign sufficient IP rights, concept art, and or digital design files to Client to allow Client to continue the project.

Termination for Bankruptcy. Subject to any restrictions imposed by law, either party may immediately terminate this Agreement, if the other party either: (1) ceases to do business in the normal course; (2) becomes insolvent; (3) admits in writing its inability to meet its debts or other obligations as they become due; (4) makes a general assignment for the benefit of creditors; (5) has a receiver appointed for its business or assets; (6) files a voluntary petition for protection under the bankruptcy laws; (7) becomes the subject of an involuntary petition under the bankruptcy laws that is not dismissed within 60 days.

Termination for Breach. If a material breach of this Agreement is not cured within 10 business days after a party's receiving notice of the breach, then the non-breaching party may terminate this Agreement immediately upon notice.

Termination Procedure. Upon 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) other than as expressly provided in this Agreement, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

Risk Allocation

Client Representations

Client represents and warrants to Artist that:

- Client owns sufficient right, title, and interest in the Client Content to permit Designer's use of the Client Content in performing the Services,
- To the best of Client's knowledge, Designer's use of the Client Content will not infringe the rights of any third party,
- Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and
- Client shall comply with all laws and regulations governing the Services and Deliverables.

Artist Representations.

Artist represents and warrants to Client that:

- The Final Deliverables will be the Designer's original creative work, except that Artist may incorporate Client Content, work from its Artist Agents and third party material (for example, stock photos, or Software as a Service).
- For any Final Deliverable that includes the work of independent contractors or third party material, Artist shall secure sufficient rights for Client to use the Final Deliverables for their intended purpose.
- To the best of Designer's knowledge, the final Deliverables will not infringe upon the IP rights, copyrights or creative rights of any third party. However, Artist will not be conducting any type of IP clearance search (for example, Artist will not be conducting a copyright, trademark, patent or design patent clearance search).

LIMITATION OF LIABILITY

The services and the work product of the Artist are sold “as is.” In all circumstances, the Designer’s maximum liability 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 Designer’s net profit.

In no event shall Artist 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 Artist, even if Artist has been advised of the possibility of such damages.

LIMITED WARRANTY

Except for the express representations and warranties stated in this agreement, Artist makes no warranties whatsoever. Artist 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.

Force Majeure

Either party may invoke Force Majeure to excuse the failure of its timely performance, if such failure was caused by: fire; flood; hurricane, tornado, or other severe storm; earthquake; act of war; sabotage; terrorism; riot; interruption or failure of electrical or telecommunications service (for example, Internet failures); or failure of suppliers, subcontractors, and carriers to substantially meet their performance obligations.

Failure to make a payment may only be considered a Force Majeure event if caused by an interruption in a third-party payment systems that otherwise qualifies as a force-majeure event.

A party invoking force majeure to excuse its failure of timely performance must show that the force-majeure event(s) and their relevant effects (i) were beyond the invoking party’s reasonable control and (ii) could not have been avoided through the exercise of due care by the invoking party.

Indemnification

Applicability. This indemnification clause governs all obligations arising under this Agreement (if any) that require a party (the “Indemnifying Party”) to defend an individual or organization (a “Protected Person”) against a claim, for example, a claim made by a third party.

Indemnification. IF: A third party makes a claim that, if finally successful, would establish a breach of a representation or warranty of this Agreement; THEN: The party who made the representation or warranty will: (i) defend the Protected Person against the claim (as defined below), and (ii) indemnify each Protected Person against any monetary award entered on the claim (as defined below).

Indemnification Against Damage Awards. (a) The Indemnifying Party will indemnify the Protected Person against all monetary awards resulting from a final judgment or award from which no further appeal is taken or possible. (b) Such monetary awards include, for example, damages, penalties, interest, and attorneys-fee awards.

Defense Obligation. (a) If the Protected Person requests legal defense, the Indemnifying Party will provide a competent defense against the claim. (b) IF: A Protected Person fails to timely request a defense; THEN: The Indemnifying Party will not be responsible for any harm to the Protected Person that may result from the delay. (c) If the Protected Person does not request a defense against the claim, the Indemnifying Party may elect, its business discretion, to provide a defense anyway. (d) For the avoidance of doubt, the defense obligation of this section applies, without limitation, to any claim brought in a judicial, arbitration, administrative, or other proceeding, including for example any relevant appellate proceedings in which the claim is at issue.

Control of the Defense. IF: The Indemnifying Party provides a defense against an indemnified claim; THEN: (a) The Indemnifying Party is entitled to control the defense of the claim. (b) The Protected Person must provide reasonable cooperation in the defense of the claim; the Indemnifying Party will reimburse the Protected Person for reasonable out-of-pocket expenses actually incurred in doing so. (c) The Protected Person must not make any non-factual admission concerning the claim without the Indemnifying Party's consent. (d) The Protected Person must not waive any defense to the claim without the Indemnifying Party's consent.

Control of Settlement. (a) The Indemnifying Party has discretion to settle the claim on behalf of the Protected Person, PROVIDED THAT the settlement terms do not (i) impose any obligation or prohibition on the Protected Person, nor (ii) include any admission by the Protected Person. (b) Any other settlement of the claim by the Indemnifying Party requires the Protected Person's prior written consent, not to be unreasonably withheld. (c) If the Protected Person settles the claim without the Indemnifying Party's prior written consent (not to be unreasonably withheld), then the Indemnifying Party will have no liability to the Protected Person in connection with the settlement.

Assumption of Control by Protected Person. A Protected Person may assume control of its defense. IF: A Protected Person does so; AND: The Indemnifying Party has previously tendered performance of its obligation to provide a defense; THEN: The Indemnifying Party will have no further responsibility or liability to the Protected Person (including for example defense and/or indemnity liability) in respect of the claim in question.

General Terms

Notices.

All notices shall be sent by email. Permissible addresses for notice include those stated in this Agreement and any other address reasonably communicated.

A notice that is sent by email but is not read by the addressee is nevertheless effective if, but only if, it has been (a) sent from an email account that has been designated for notice and (b) delivered to an email account that has been designated for notice. Email accounts designated for notice are identified at the top of this Agreement, and may be amended only by written notice.

Dispute Resolution.

Early Neutral Evaluation. At the request of either party, the parties will submit any dispute between them, arising out of or relating to this Agreement or any transaction or relationship arising from it, to nonbinding early neutral evaluation, in NYC, in accordance with the Early Neutral Evaluation procedures of the American Arbitration Association.

Arbitration. At the request of either party, the parties will submit any dispute between them, arising out of or relating to this Agreement or any transaction or relationship arising from it, to binding arbitration in NYC, through the American Arbitration Association. The prevailing party in any dispute resolved by arbitration or litigation will be entitled to recover its costs and attorneys' fees.

Jurisdiction. The parties irrevocably consent to the jurisdiction of the state and federal courts located in New York County. The parties hereby waive any jurisdictional or venue defenses and consent to service of process by certified mail.

Interpretation.

Governing Law. This Agreement will be governed by the laws of the state of New York without regard to its conflict or choice of law rules.

Design Terminology: Any design terminology in the Statement of Work is defined according to standard design industry usage. Any dispute as to the meaning or scope of design terminology will be determined in good faith by Artist.

IF / THEN Construction. Use of capitalized "IF:" and "THEN:" in a sentence is intended only to enhance readability. It has no special meaning apart from its lower case meaning.

Modification & Waiver. Any modification of this Agreement must be in writing. 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.

Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will remain in full force and effect.

Mutual Drafting. Any ambiguity or inconsistency in this Agreement is to be resolved in accordance with the most reasonable construction and not strictly for or against either party by virtue of that party's author-ship.

Headings. Section headings are provided for convenience only and do not affect the meaning of any terms.

Integration. This Agreement comprises the entire understanding of the parties and supersedes all prior agreement and understandings.

Definitions

Client Content - all materials, information, photography, writings and other creative content provided by the Client for use in the preparation of and/or incorporation in the Deliverables.

Third Party Materials – works that are incorporated into the Final Deliverables, but not created by Artist or owned by Client. Third Party Materials includes, for example, stock photography or illustration.

Preliminary Works - all artwork including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by Artist and which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Art.

Deliverables - the services and work product specified in the Statement of Work to be delivered by Artist to Client, in the form and media specified in the Proposal.

Final Deliverables - the final versions of Deliverables provided by Artist and accepted by Client.

Signatures - Each signatory represents that it has the full authority to enter into this Agreement and to bind her or his respective party to all the terms and conditions of this Agreement. Digital signatures may be used to authenticate this document.