

TERMS AND CONDITIONS III

TERMS III

The performance of the design and production services and delivery of end product (collectively the "Design" and "Production Services") described in the contract or invoice of which these terms and conditions are a part (or are on the face hereof) by, **bydesign** to the client identified in the attached contract or invoice ("Client") is governed by the following terms and conditions. Unless otherwise agreed in writing, **bydesign** expressly rejects any additional or different terms or conditions proposed by Client.

DESCRIPTION OF WORK III

The Agreement (the "Agreement") for the project described in the Scope of Work to which these terms and conditions are attached (the "Project") shall consist of the final Scope of Work and Timeline, these terms and conditions, and any change orders set forth in writing and executed by, **bydesign** and the Client after the acceptance of the original Scope of Work. Changes to the Scope of Work may result in adjustments to the charges for the Project.

PAYMENT III

Payment for Design and Production Services will be made as follows. 30% of the Estimated Design and Production Fees are due upon acceptance of the proposal. Monthly invoices will be submitted by the 10th day of each month for the Design and Production services performed during the prior month. The remaining balance (including any and all expenses for vendors, service providers, specialists or subcontractors engaged in accordance with the proposal ("Outside Expenses") not paid in advance by Client) will be due upon delivery of the finished Project. Except for the portions of invoices that are disputed in good faith by the Client for not being in accordance with the terms and conditions of this Agreement, any amounts not paid when due shall accrue interest at the rate of 1.5% per month from the date due until paid. **bydesign** reserves the right to withhold delivery of all electronic and/or printed materials until the undisputed portion(s) of overdue invoices are paid. All Outside Expenses, including but not limited to, Photography, Illustration, Copywriting, Printing, Mileage, Photocopies and Color Outputs will be billed with a surcharge of 20% vendor costs. The surcharge will not be applied to Deliveries and Postage.

CHANGES TO THE SCOPE OF WORK III

Revisions or author's alterations to the Scope of Work shall obligate the Client to additional fees and costs. These may include but are not limited to: changes made to copy after the final copy has been submitted; changes made to the design once layouts, website design, or site map have been approved; extensive alterations; a change in marketing objectives on the part of the Client and new work requested by the Client after the execution of the Agreement. All production costs are based on the assumption that copy will be provided electronically. Change orders will be prepared by, **bydesign** and provided to the Client outlining the changes to the Scope of Work, and any additional costs for those changes. The Client agrees to pay **bydesign** additional fees and costs for said revisions or alterations at a rate of \$75 per hour. Hourly rates quoted in proposals will remain in effect until further written notice is given. If **bydesign** is unable to meet the delivery schedule set forth in the Agreement due to delays by Client or changes requested by Client in the Scope of Work, **bydesign** may, in its discretion, revise the production schedule as necessary and provide for adjustments in the costs for the Project.

OVERTIME/RUSH CHARGES III

Estimates are based on normal and reasonable time schedules, and may have to be revised to take into consideration any "rush" requests requiring overtime or weekends. Knowledge of Client's deadline is essential to provide an accurate estimate of costs. **bydesign** overtime incurred at the Client's request will be billed at a rate of \$90 per hour. The Client will also be responsible for additional charges imposed by outside suppliers, such as pre-press or printers, to meet Client's "rush" requests. To the extent possible, **bydesign** will advise Client of all situations that require overtime and/or rush charges, and the amount of additional compensation that will be charged to meet such overtime requirements or rush requests. Rush or overtime fees may be incurred if the Client does not meet approval or content deadlines which have been established to meet the Client's desired schedule.

OWNERSHIP AND USAGE RIGHT'S III

The rights to be granted by, **bydesign** under this Agreement will be transferred to Client once full payment for services is made by Client to **bydesign**. Upon receipt of full payment, the Client is hereby granted exclusive and unlimited usage and reproduction rights to the final designs prepared for Client as part of the Project. Except for the foregoing license, all right, title and interest to all designs and artwork (whether draft or final versions) remain with **bydesign** or its contractors or vendors, as applicable. This includes, but is not limited to, layouts, animations and designs created by, **bydesign** or its contractors or vendors, computer disks containing such layouts, photography or illustration created by independent photographers or illustrators commissioned by, **bydesign**, and photography or other images purchased by, **bydesign** from a stock agency on the Client's behalf. **bydesign** reserves the right to reproduce any and all designs created by, **bydesign** in print and electronic media for **bydesign**'s promotional purposes for an unlimited period of time. **bydesign** has the right to retain, or if applicable, Client agrees to provide / by / DESIGN with, 25 printed samples of each tangible product produced as a result of the Project. In developing any trademarks, **bydesign** will use reasonable commercial efforts, consistent with standards in the industry, to ensure that any such trademarks are original. **bydesign**'s efforts shall not include a complete trademark clearance search. Should a higher level of assurance be required by Client, the services of a trademark search firm and intellectual property attorney should be retained by Client.

NON-DISCLOSURE OF CONFIDENTIAL INFORMATION III

Each Party will not, at any time, whether during or after the termination or expiration of this Agreement, for any reason whatsoever, disclose to any person or entity or use for any purpose other than fulfilling its obligations hereunder, the other Party's Confidential Information, as defined below. Any concepts, business strategies, trademarks, service marks, materials, outlines, etc. provided to a Party by the other Party constitute trade secrets and Confidential Information under this Agreement and shall not be used by the other Party for any other purpose than for the purpose of the Project.

CONFIDENTIAL INFORMATION III

Confidential Information means all confidential and proprietary information of either Party, including, without limitation, information relating to: the business; trade secret information; client, investor, customer and supplier lists, and contracts or arrangements; financial information; market research and development procedures, processes, techniques, plans and results; investment or acquisition opportunities, pricing information or policies; computer software, passwords, programs or data; and all other business related information, whether such information is in written, graphic, recorded, electronic, photographic, data or any machine readable form or is orally conveyed to or developed by the other Party; provided that Confidential Information shall not include information which: (a) is in or hereafter enters the public domain through no fault of the receiving party; (b) is obtained by the receiving party from a third party having the legal right to use and disclose the same; (c) is in the possession of the receiving party prior to receipt from the disclosing party, as evidenced by the receiving party's written records pre-dating such receipt; (d) is independently developed by the receiving party as evidenced by written record proving such independence; or, (e) is required to be disclosed by governmental order or judicial subpoena, provided that prior to disclosure the receiving party shall give the disclosing party prior notice to allow the disclosing party an opportunity to obtain an appropriate protective order.

RETURN OF CONFIDENTIAL INFORMATION III

Each Party shall, upon the request of the other Party, return to the other Party all written or other descriptive materials containing Confidential Information or otherwise relating to the other Party, its business and its intellectual property, including, but not limited to, drawings, blueprints, descriptions, notes, analyses or other papers or documents which contain any such information. In any event, upon the completion or expiration of this Agreement, or if this Agreement is

RETURN OF CONFIDENTIAL INFORMATION (CONT') III

terminated for any reason, each Party shall, without request by the other party, return all aforementioned Confidential Information; provided that each party may retain one archival copy of the Confidential Information, solely for the purpose of determining its obligations under this Agreement.

INDEMNIFICATION III

Each Party shall indemnify, defend, and hold harmless the other and its affiliates, officers, agents, and employees, from any and all claims, suits, actions, demands, damages, liabilities, expenses (including reasonable fees and disbursements of counsel), judgments, settlements and penalties of every kind that may be asserted or incurred including but not limited to: (a) any breach by such Party of any trademark, tradename and/or copyright infringement, invasion of privacy, defamation, or other wrongful use of any pictures, photographs, images, copy or other materials; and/or (b) the negligent, intentionally wrongful or illegal acts or omissions of such Party, its employees, agents, subcontractors or other representatives and/or (c) violations of any federal, state, local and/or international laws, rules and/or regulations to which such Party is subject.

APPLICABLE LAW/DISPUTE RESOLUTION III

This agreement shall be governed by, and construed under, the laws of the State of Oregon. In the event of a dispute arising under this Agreement, the dispute shall be finally settled by arbitration under the Rules of the American Arbitration Association (the "AAA"). The Arbitration shall be held in Portland, Oregon. The arbitration shall be held before a single arbitrator, selected in accordance with the rules of the AAA. The arbitrator's award shall be final and shall be enforceable in any court of competent jurisdiction. The arbitrator shall award the prevailing party its costs of such arbitration including, but not limited to, reasonable attorneys' fees. If a party refuses to comply with the rendered award, and the other party enters an application for judicial enforcement thereof, the refusing party shall bear all of the expenses incurred in connection with such application. Nothing in this Paragraph 11 shall prevent either party from resorting to judicial process if injunctive or other equitable relief from a court is necessary to prevent serious and irreparable injury to one party or to others.

CANCELLATION III

In the event the Client cancels this Agreement prior to the completion of the Project, within five (5) business days of such cancellation, Client shall pay (a) **bydesign** for all work performed by **bydesign** up to the date of termination, (b) for all contracted for Outside Expenses and commitments that have been incurred and cannot be cancelled and (c) a cancellation fee equal to 15% of the remaining fees that would otherwise have been paid to **bydesign** if the Agreement were to have been fully performed.

ERRORS III

The Client has the responsibility to proofread and examine all work produced during the Project. Therefore, the Client is ultimately responsible for any typographical, spelling, grammatical, copy, photographic, illustrative, layout or other errors discovered after printing or reproduction, or for any work or services performed by any party selected by the Client. In the event the Client determines that there are errors in the work produced during the Project, Client shall notify **bydesign** of any errors within 48 hours of Client's determination. Failure to promptly notify **bydesign** shall constitute a waiver by Client of any claim arising out of such errors.

PERFORMANCE III

Each party shall use commercially reasonable efforts or fulfill its obligations hereunder, but shall in no event be responsible for any failure or delay in performance due to any catastrophe, act of God or government authority, civil strife, or any other cause beyond the control of such party. In no event shall **bydesign**'s liability exceed the sum of payments received from the Client under this Agreement. Neither party shall be liable to the other for any consequential, indirect, special or punitive damages, even if such damage were reasonably foreseeable.

PRICING III

The prices set forth in this Agreement are valid through August 31, 2011 and represent **bydesign**'s good-faith estimate of costs included in the price. If printing is a component of this estimate, printing prices are not guaranteed until paper has been ordered. **bydesign** shall inform Client promptly if any variations in costs or outside expenses are anticipated.

WAIVER III

Any waiver by either party, whether express or implied, of any provision of this Agreement, any waiver of default, or any course of dealing hereunder, shall not affect such party's right to thereafter enforce such provision or to exercise any right or remedy in the event of any other default or breach whether or not similar.

SEVERABILITY III

If any provision of this Agreement shall be deemed void in whole or in part for any reason whatsoever, the remaining provisions shall remain in full force and effect.

INDEPENDENT CONTRACTOR III

In performing their respective obligations under this Agreement, the parties agree that their relationship is that of independent contractors and not that of a partners, joint venturers, agents, employees or part-time employees of the other party. Neither party will represent itself as, act or purport to act as or be deemed to be the agent, representative, employee or servant of the other party.

NOTICES III

If either party is required or permitted to send the other party any notices, such notices shall be in writing and sent to the other party at its last business address by registered or certified mail, postage prepaid, return receipt requested or by private overnight delivery service, return receipt requested. Notices shall be effective upon receipt.

ENTIRE AGREEMENT III

This Agreement and the attachments hereto represent the entire agreement between **bydesign** with respect to the performance of the Design and Production Services and supersedes any prior oral or written agreements of discussions, may not be modified or amended unless in writing signed by each of the parties, and may not be assigned by either party without the written consent of the other party which consent will not be unreasonably withheld.