

ADVERTISING AGENCY RETAINER AGREEMENT

1. **THE PARTIES.** This Retainer Agreement (the "Agreement") is made effective as of _____ (mm/dd/yyyy) by and between:

Service Provider: _____ with a mailing address of _____ (the "Service Provider"), and

Client: _____ with a mailing address of _____ (the "Client").

2. **SERVICES.** The Service Provider agrees to provide the following Service(s):

(the "Services").

3. **TERM.** The Services shall commence on _____ (mm/dd/yyyy) and end: (check one)

- On the date of _____ (mm/dd/yyyy).
- Upon completion of the Services performed.
- Other: _____.

4. **COMPENSATION.** In consideration for the Services provided, the Service Provider is to be paid in the following manner: (check all that apply)

- Per Hour. \$ _____ / hour.
- Per Job. \$ _____ for the completion of the Services.
- Commission. _____ % commission based on _____.
- Other: _____.

5. **PAYMENT METHOD.** The Service Provider shall be paid, in accordance with Section 4, in the following manner: (check one)

- Every week month quarter, beginning on _____ (mm/dd/yyyy).
- Upon completion of the Services performed.
- Upon the Client receiving an invoice from the Service Provider.
- Other: _____.

6. **RETAINER.** The Client is: (check one)

- **REQUIRED** to pay a Retainer in the amount of \$ _____ to the Service Provider as an advance on future Services to be provided (the "Retainer"). The Retainer is: (check one)
 - Refundable.
 - Non-Refundable.
- **NOT REQUIRED** to pay a Retainer before the Service Provider is able to provide Services.

7. CONTINGENCY. As part of the Service Provider's pay: (check one)

- There SHALL be a contingency fee arrangement in accordance with:
(check applicable)
 - _____% of _____.
 - Flat fee of \$_____ for the following:
_____.
- There SHALL NOT be a contingency fee arrangement as part of this Agreement.

8. EXPENSES. The Service Provider shall be: (check one)

- Responsible for ALL expenses. The Service Provider shall be responsible for all expenses related to providing the Services under this Agreement. This includes, but is not limited to, supplies, equipment, operating costs, business costs, employment costs, taxes, Social Security contributions and/or payments, disability insurance, unemployment taxes, and any other cost that may or may not be in connection with the Services provided by the Service Provider, including out-of-pocket expenses.
- Responsible for ONLY the following expenses:
_____.

The Client agrees to pay the Service Provider within thirty (30) days of receiving notice of any other expense directly associated with the Services. Upon the Client's request, the Service Provider may have to show receipts or proof of purchase for said expense.

- Responsible for NO expenses. The Service Provider shall not be responsible for any expenses related to providing the Services. The Client shall be responsible and will be required to pay for all expenses in connection with the Services provided. The Client agrees to pay the Service Provider within thirty (30) days of receiving notice of any expense directly associated with the Services. Upon the Client's request, the Service Provider may have to show receipts or proof of purchase for said expense.

9. LEGAL NOTICE. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States Postal Service via Certified Mail with return receipt. If the Client or Service Provider prefers to receive notices to an address differing from the mailing address entered in Section 1, enter any new addresses below:

Client's Address: _____
Service Provider's Address: _____

10. TERMINATION OF AGREEMENT. This Agreement may be terminated at any time by the Service Provider or the Client by written notice to the other party with at least _____ days' notice. Notice shall be deemed to have been sufficiently given either when served personally or when sent by first-class mail address to the parties at the addresses set forth in this Agreement.

11. DISPUTES. If any dispute arises under this Agreement, the Service Provider and the Client shall negotiate in good faith to settle such dispute. If the parties cannot resolve such disputes themselves, then either party may submit the dispute to mediation by a mediator approved by both parties. If the parties cannot agree with any mediator or if either party does not wish to abide by any decision of the mediator, they shall submit the dispute to arbitration by any mutually acceptable arbitrator or the American Arbitration Association (AAA). The costs of the arbitration proceeding shall be borne according to the decision of the arbitrator, who may apportion costs equally or in accordance with any finding of fault or lack of good faith of either party. If either party does not wish to abide by any decision of the arbitrator, they shall submit the dispute to litigation.

12. RETURN OF RECORDS. Upon termination of this Agreement, the Service Provider shall deliver all records, notes, and data of any nature that are in the Service Provider's possession or under the Service Provider's control and that are of the Client's property or relate to the Client's business.

13. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

14. INDEPENDENT CONTRACTOR STATUS. The Service Provider, under the code of the Internal Revenue (IRS), is an independent contractor and neither the Service Provider's employees or contract personnel are, or shall be deemed, the Client's employees. In its capacity as an independent contractor, the Service Provider agrees and represents that:

- a) The Service Provider has the right to perform Services for others during the term of this Agreement;
- b) The Service Provider has the sole right to control and direct the means, manner, and method by which the Services required under this Agreement will be performed;
- c) The Service Provider shall select the routes taken, starting and ending times, days of work, and the order in which work will be performed;
- d) The Service Provider has the right to hire assistants as subcontractors or to use employees to provide the Services under this Agreement;
- e) Neither the Service Provider nor the Service Provider's employees or personnel shall be required to wear any uniforms provided by the Client;
- f) The Services required by this Agreement shall be performed by the Service Provider or the Service Provider's employees or personnel, and the Client will not hire, supervise, or pay assistants to help the Service Provider;
- g) Neither the Service Provider nor the Service Provider's employees or personnel shall receive any training from the Client for the professional skills necessary to perform the Services required by this Agreement; and
- h) Neither the Service Provider nor the Service Provider's employees or personnel shall be required by the Client to devote full time to the performance of the Services required by this Agreement.

15. STATE AND FEDERAL LICENSES. The Service Provider represents and warrants that all employees and personnel associated shall comply with federal, state, and local laws requiring any required licenses, permits, and certificates necessary to perform the Services under this Agreement.

16. PAYMENT OF TAXES. Under this Agreement, the Client shall not be responsible for:

- a) Withholding FICA, Medicare, Social Security, or any other federal or state withholding taxes from the Service Provider's payments to employees or personnel or make payments on behalf of the Service Provider;
- b) Making federal and/or state unemployment compensation contributions on the Service Provider's behalf; and
- c) Making payments of taxes incurred while performing the Services under this Agreement, including all applicable income taxes and, if the Service Provider is not a business entity, all applicable self-employment taxes. Upon demand, the Service Provider shall provide the Client with proof that such payments have been made.

17. EMPLOYEES' COMPENSATION. The Service Provider shall be solely responsible for the following:

- a) Employee Benefits. The Service Provider understands and agrees that they are solely responsible and shall be liable to all benefits that are provided to their employees, including, but not limited to, retirement plans, health insurance, time off for vacation, sick pay, personal leave, or any other benefit provided.
- b) Unemployment Compensation. The Service Provider shall be solely responsible for the unemployment compensation payments on behalf of their employees and personnel. The Service Provider shall not be entitled to unemployment compensation with the Services performed under this Agreement.
- c) Workers' Compensation. The Service Provider shall be responsible for providing all workers' compensation insurance on behalf of their employees. If the Service Provider hires employees to perform any work under this Agreement, the Service Provider agrees to grant workers' compensation coverage to the extent required by law. Upon request by the Client, the Service Provider must provide certificates proving workers' compensation insurance at any time during the performance of the Services.

18. INDEMNIFICATION. The Service Provider shall release, defend, indemnify, and hold harmless the Client and its officers, agents, and employees from all suits, actions, or claims of any character, name, or description including reasonable Service Provider fees, brought on account of any injuries or damage, or loss (real or alleged) received or sustained by any person, persons, or property, arising out of services provided under this Agreement or by Service Provider's failure to perform or comply with any requirements of this Agreement including, but not limited to, any claims for personal injury, property damage, infringement of copyright, patent, or other proprietary rights. The Client reserves the right to retain whatever funds which would be due to the Service Provider under this Agreement until such suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and satisfactory evidence to that effect furnished.

19. CONFIDENTIALITY & PROPRIETARY INFORMATION. The Service Provider acknowledges that it will be necessary for the Client to disclose certain confidential and proprietary information to the Service Provider in order for the Service Provider to perform their duties under this Agreement. The Service Provider acknowledges that disclosure to a third (3rd) party or misuse of this proprietary or confidential information would irreparably harm the Client. Accordingly, the Service Provider will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of the Client

without the Client's prior written permission except to the extent necessary to perform the Services on the Client's behalf.

Proprietary or confidential information includes, but is not limited to:

- a) The written, printed, graphic, or electronically recorded materials furnished by the Client for the Service Provider to use;
- b) Any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that the Client makes reasonable efforts to maintain the secrecy of, business or marketing plans or strategies, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind, sales projections, and pricing information; and
- c) Information belonging to customers and suppliers of the Client about whom the Service Provider gained knowledge as a result of the Service Provider's Services to the Client.

Upon termination of the Service Provider's Services to the Client, or at the Client's request, the Service Provider shall deliver all materials to the Client in the Service Provider's possession relating to the Client's business. The Service Provider acknowledges any breach or threatened breach of confidentiality under this Agreement will result in irreparable harm to the Client for which damages would be an inadequate remedy. Therefore, the Client shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of confidentiality. Such equitable relief shall be in addition to the Client's rights and remedies otherwise available at law.

Furthermore, proprietary information under this Agreement shall include:

- a) The product of all work performed under this Agreement (the "Work Product"), including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, works-in-progress and deliverables, will be the sole property of the Client, and the Service Provider hereby assigns to the Client all right, title, and interest therein, including, but not limited to, all audiovisual, literary, moral rights and other copyrights, patent rights, trade secret rights, and other proprietary rights therein. The Service Provider retains no right to use the Work Product and agrees not to challenge the validity of the Client's ownership in the Work Product;
- b) The Service Provider hereby assigns to the Client all right, title, and interest in any and all photographic images and videos or audio recordings made by the Client during the Service Provider's work for them, including, but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings; and
- c) The Client will be entitled to use the Service Provider's name and/or likeness in advertising and other materials.

20. ASSIGNMENT AND DELEGATION. The Service Provider may assign rights and may delegate duties under this Agreement to other individuals or entities acting as a subcontractor (the "Subcontractor"). The Service Provider recognizes that they shall be liable for all work performed by the Subcontractor and shall hold the Client harmless of any liability in connection with their performed work.

The Service Provider shall be responsible for any confidential or proprietary information that is shared with the Subcontractor in accordance with this section. If any such information is shared by the Subcontractor to third (3rd) parties, the Service Provider shall be made liable.

21. GOVERNING LAW. This Agreement shall be governed under the laws in the State of _____.

22. SEVERABILITY. This Agreement shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court administers that any such provision or section is invalid or unenforceable, thus, limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

23. ADDITIONAL TERMS AND CONDITIONS.

24. ENTIRE AGREEMENT. This Agreement, along with any attachments or addendums, represents the entire agreement between the parties. Therefore, this Agreement supersedes any prior agreements, promises, conditions, or understandings between the Client and the Service Provider. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written hereunder.

Service Provider's Signature: _____

Date: _____

Print Name: _____

Client's Signature: _____

Date: _____

Print Name _____