

SERVICE RETAINER AGREEMENT (front)



Remove all language in italics before using this form.

This Service Retainer Agreement (“Agreement”) is entered into by and between _____ (“Client”) and _____ (“Designer”), is effective as of the last date of signature below, and shall continue in effect until cancelled pursuant to paragraph 5 below (“Term”).

Client requires ongoing services such as those provided by Designer, and wishes to engage Designer to perform such services as a subcontractor on an ongoing basis; and Designer agrees to provide such services as set forth herein. For good and valuable consideration, the parties agree as follows:

1. Services

1.1 *Services.* Designer agrees to provide to Client the design services and deliverables set forth in the attached Statement of Work (“SOW”) (the “Services”). The Services are estimated to require _____ hours of Designer’s time per month.

1.2 *Revisions/Changes.* The SOW reflects the scope of work initially required by Client and Designer’s time to complete such work. If Client requests additional revisions, changes, or services in any particular month, Designer will advise Client of the additional time required, and shall invoice Client for such additional Services on a time and materials basis, at the hourly rate of \$ _____ per hour. Upon mutual agreement, additional SOWs may be attached hereto to modify the Services on an ongoing basis. If additional SOWs increase the time needed to perform the Services per month, the parties shall adjust the Retainer accordingly.

1.3 *Independent Contractor.* Designer is an independent contractor, not an employee of Client. Designer shall perform the Services under the general direction of Client, but Designer shall determine, in Designer’s sole discretion, the manner and means by which the Services are accomplished. Designer may engage third-party subcontractors to perform any of the Services (“Design Agents”).

1.4 *No Exclusivity.* This Agreement does not create an exclusive relationship between the parties. Client may engage others to perform services of the same or similar nature to those provided by Designer, and Designer may offer and provide design services to others, solicit work from third parties and otherwise advertise the services offered by Designer.

2. Compensation

2.1 *Retainer.* During the Term of this Agreement Client shall pay to Designer an advance monthly Retainer in the amount of \$ _____.

2.2 *Expenses.* Client shall reimburse Designer for out-of-pocket expenses incurred in performance of the Services for licenses to use Third-Party Materials, photocopies, travel expenses, postage, courier, and the like.

2.3 *Invoices.* Client shall pay the first Retainer upon execution of this Agreement. Thereafter, Designer shall invoice Client for the Retainer in advance for each month, which shall be paid within five (5) days of receipt. Designer shall invoice Client for additional fees and expenses on a monthly basis, which Client shall pay within thirty (30) days of receipt. Designer may invoice Client in advance for substantial expenses, for example, licenses for Third-Party Materials, and Client shall pay such advance invoices within the time frame requested by Designer.

3. Intellectual Property

3.1 *Final Works.* Upon completion of the Services each month, and expressly conditioned upon full payment of all fees and costs due therefore, Designer assigns to Client all rights, title and interest, including copyright, in and to the

final deliverables comprising the finished works approved for implementation by Client (“Final Works”). Designer warrants and represents that, to the best of its knowledge, the Final Works are original to Designer and/or its Design Agents; and that Designer has procured from its Design Agents appropriate agreements as necessary to grant the ownership rights assigned to Client herein. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment. Client hereby grants to Designer the nonexclusive right to reproduce, publish and display the Final Works in its portfolios in all media including print and online, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement in the field of design, and Designer retains the right to be credited with authorship therein.

3.2 *Preliminary Works.* Designer retains intellectual property ownership of all other work product and deliverables, including but not limited to explorations, alternate or preliminary designs not selected for implementation by Client, interim refinements, and proof of concept deliverables (“Preliminary Works”), and Client shall return all Preliminary Works to Designer within thirty (30) days of Designer’s request.

3.3 *Third-Party Materials.* Designer shall inform Client of any need to license, at Client’s expense, materials owned by third parties to be incorporated into the Final Works (for example, photography, illustration, font licenses, text), and Client shall obtain the license(s) necessary to permit Client’s use of such materials. Client acknowledges that no rights are granted to Client for use of third-party materials in Preliminary Works, including proof of concept deliverables. In the event Client fails to properly secure or otherwise arrange for any necessary licenses for use of third-party materials, or instructs Designer to incorporate third-party materials into deliverables, 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 such use.

4. Warranties:

Designer warrants and represents that the Services shall be performed and completed in a professional manner, and that the Work Product is original to Designer and, to the best of Designer’s knowledge, shall not infringe the copyright, trademark, trade secret, publicity or privacy rights, or other intellectual property or proprietary rights of third parties. This warranty does not extend to any unauthorized use of Preliminary Works or adaptations made to the Final Works by Client.

5. Cancellation/Delays

5.1 *Cancellation.* Either party may cancel this Agreement upon thirty (30) days written notice for convenience, or upon thirty (30) days notice for material breach of this Agreement, if the other party fails to cure the breach within that thirty-day period. In the event of such cancellation, Designer retains ownership of all rights, including copyrights, in and to all deliverables except Final Works for which Client has already made full payment (retainer and any additional hourly fees and expenses).

5.2 *Delays.* Client acknowledges and agrees that Designer’s ability to meet

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schedules is dependent upon Client's prompt performance of its obligations to provide materials, approvals and instructions, and that any delays in Client's performance or requests for changes to the scope of work as set forth in the SOW may delay the Services. Any such delay caused by Client shall not constitute a breach by Designer of this Agreement.

5.3 *Kill Fee.* Client acknowledges that Designer has reserved time to perform the Services for each month, and Designer was not able to accept other work for that month. Accordingly, in the event Client cancels or delays the Services, Client shall pay to Designer, in addition to the retainer and expenses already incurred through the date of such cancellation or delay, a kill fee equal to a pro rata portion of the retainer amount for the period ending thirty (30) days following the date of termination, unless Designer is able to secure new work for that time for the same or greater compensation.

5.4 *Force Majeure.* Designer shall notify Client if Designer is unable to timely complete the Services or any portion thereof by reason of fire, earthquake, labor 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, and the parties will then discuss in good faith revisions to the schedule for completion of the Services. Designer shall not be deemed in breach of this Agreement in such circumstances.

6. Confidential Information

Each party acknowledges that in connection with the Proposal it may receive certain confidential or proprietary technical and business information and materials of the other party ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party; and shall not use any Confidential Information except as may be necessary to perform its obligations under the Proposal. Notwithstanding the foregoing, Confidential Information will not include any information that is or becomes generally publicly known through no fault of the receiving party, or is rightfully received from a third party. Client shall not solicit services directly from Designer's employees or Design Agents without Designer's prior written consent.

7. Limitation of Liability

Client shall be responsible for all compliance with laws or government rules or regulations applicable to Client's final products. Client shall have sole responsibility for ensuring that any deliverables comprising trade names, words, symbols, designs, logos or other devices or designs used by Client to designate the origin or source of goods or services ("Trademarks") 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 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.

8. General

Any modifications of this Agreement must be in writing signed by both parties. This Agreement shall be construed and enforced under the laws of the United States and the State of _____ without reference to or application of conflict of law rules. 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, either party may commence mediation and/or binding arbitration through _____ [name of local mediation/arbitration program], or other forum mutually agreed to by the parties. The prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its attorneys' fees and costs. Litigation arising from this Agreement shall be brought in state or federal court, as appropriate, within _____ [state, local district court]. This Agreement, together with the SOW(s), comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the Services. All notices shall be delivered in writing to the parties' respective addresses provided below, or as subsequently updated.

Designer:

Name: _____

Address: _____

Designer Contact Name: _____

Signed: _____ Date: _____

Client:

Name: _____

Address: _____

Client Officer Name: _____

Title: _____

Signed: _____ Date: _____