

Digital Marketing

TERMS & SERVICE AGREEMENT

- 1. Online Advertising and Marketing Services.** Empire Advertising and Design, LLC (Agency) offers a variety of services to market businesses online and improve website visibility. By engaging us, you (Client) agree to the Terms and Service Agreement (Agreement) set forth below. If you have questions, or if we may be of any service, please do not hesitate to contact us. Agency provides social media marketing, search engine marketing, website optimization and related services on a local, national and international basis. As such, we submit information on your behalf to social media sites and search engine providers for whom you must agree to their terms and conditions. These providers may include, but are not limited to: Facebook, LinkedIn, Instagram, Google, Yahoo, MSN/Bing, Yelp, local online newspapers, Twitter, Pinterest, YouTube and other sites. The terms and conditions of these providers all apply. Agency will not share your information with any business other than in the course of securing online advertising and marketing services on your behalf.
- 2. Advertising Material.** Agency has the right to place information pertaining to your business on any of the social media, publisher, and search provider websites, such as those listed above, and you authorize Agency to develop content based on information or material provided by you or your designees and collected by Agency including copy, form, size, text, graphics, names, addresses, phone numbers, URLs, logos, trade names, trademarks, service marks, endorsements, photographs or likenesses, and videos. Further, you represent that the material and information you provide to Agency is truthful, not misleading, and that you have the authority to represent this product and service information to Agency. Additionally, if so contracted, you authorize Agency to contact your customers for the sole purpose of gaining endorsements and reviews of your products and services for publication. Further, articles, press releases, and blog postings will be sent for approval before publishing. The timeliness of these pieces is critical to campaign performance. For this reason, all monthly content will be considered approved one week after the content was sent for approval unless requested edits or other communication is received from the client. Finally, you authorize Agency to utilize tracking phone numbers, and even record calls on your behalf, for 'customer service' purposes, and upon automatic notification to all incoming callers on tracking phone numbers if included when that service is contracted.
- 3. Client's Obligations.** The Client shall provide assistance, technical information and decisions to the Agency, as reasonably required by the Agency in sufficient time to facilitate the execution of marketing efforts in accordance with any estimated delivery dates or milestones. The Client agrees to work closely with Agency to provide regular information and feedback so Agency can create fresh content and make adjustments to marketing efforts, accordingly. The Client shall have sole responsibility for ensuring the accuracy of all information provided to the Agency and warrants and undertakes to the Agency that the Client's employees assisting in the execution of an effort have the necessary skills and authority. This includes providing necessary login information and passwords to access social media, analytics, hosting, domains, and other third-party accounts necessary for Agency to carry out marketing efforts.
- 4. Rates.** All advertising purchased will be at the rates and on the terms indicated in this Agreement. Agency may, in its discretion, from time to time, increase the rates listed on any rate card, modify the product/service offerings, or change its service terms. The Agency will inform the Client of any increase in rates, new product/service modifications, or change in terms in writing 30 days prior to the effective date of the increase, modification or change that could impact this agreement. If the rates are increased, products/services modified, or terms changed, the Client may cancel the remainder of the term of this Agreement, as of the date the new rates, modifications, or changes become effective. Client must notify the Agency in writing if the Client decides to cancel the remaining term of this Agreement because of increases, modifications, or changes not less than 10 days prior to the changes taking effect. If the Client fails to provide such written notice, Client agrees to be bound by the new rates. Product/service modifications, and terms, which will become a part of this Agreement and become effective on the date set forth in the Agency's notice.

5. **Payment.** Agency will issue invoices to Client. Payment is due and will be made automatically via ACH or credit card in advance on the first (1st) of each month that the contract is in effect. Failure to secure final approval from Client on website designs, social media page creation, digital creatives or coop reimbursement on digital ads will not be considered a reason to delay payment beyond the due date. Interest will accrue at the rate of 18% per annum for any late payment. In addition to the amount owed for unpaid advertising and applicable interest or late charges, the Client agrees to pay the Agency for all expenses incurred by it to collect any amounts payable under this Agreement, including costs of collection, court costs and attorney's fees.
6. **Taxes.** In the event that any federal, state or local taxes are imposed on the printing, publication or distribution of advertising material or on the sale of advertising or products and services produced by the Agency, these taxes will be assumed and paid by the Client.
7. **Termination.** The Agency may reject an advertising order and/or immediately terminate this Agreement, upon notice to Client for any of the following reasons:
 - a. if the Client fails to make payment when due or otherwise fails to perform any of the provisions of this Agreement,
 - b. if the Client makes an assignment for the benefit of creditors,
 - c. if a petition in bankruptcy or for reorganization under the bankruptcy or insolvency laws is filed by or against the Client,
 - d. if the Client ceases doing business or is likely to cease doing business or
 - e. in the opinion of the Agency, the credit of the Client is or may be impaired. If this Agreement is terminated for any of these reasons, Client will nevertheless remain liable for balances due on any products and services that were purchased, whether billed or unbilled, and Agency will send an invoice to Client, which Client agrees to promptly pay.
8. **Cancellation.** If Client seeks to cancel services prior to expiration of the term, they may cancel with 30 days written notice provided that they immediately pay all outstanding invoices, the hourly rate for any hours used beyond those included in Agreement, and a cancellation fee equal to one month's service fees under Agreement.
9. **Errors.** The Client may not claim a breach, terminate or cancel this Agreement if there are typographical errors, incorrect ad placements, under deliveries, omissions or errors in advertising, social media and website content provided by the Agency. The Agency agrees to take corrective action within 2 business days of notification by the Client, that portion of the advertising, website or social media content which may have been rendered valueless by such typographical errors, incorrect ad placements, under deliveries or omission of copy, unless such error arose due to the error or omission of Client, or after the advertisement, website or social media content had been set and proofed or otherwise confirmed by the Client or the advertisement was submitted after start date. The Agency will not be liable to Client for any loss or damage that results from a typographical error, incorrect ad placement, under delivery, omission or error related to the products and services it provides.
10. **Retainer Clients.** If you are on a monthly marketing retainer, you will be advised in your Agreement the maximum number of monthly marketing hours you are allotted. We strive to use up to your maximum allotted hours per month; however, occasionally, this is not possible because we are awaiting content or approvals from you for the proposed marketing initiatives or you may have asked to defer some hours in anticipation of a large future initiative. Except as otherwise specified in the Agreement, if you do not use all marketing retainer hours in a month, unused hours may roll forward only to the next month. If they are not used in the following month, they are forfeited. If you exceed the maximum number of hours in a month, Agency, at its discretion will either reduce your bank of hours for the upcoming month or bill you at the rate of \$135/hour for any overages.
11. **SEO/Digital Marketing.**
 - a. Client acknowledges the following with respect to SEO services from Agency:
 - i. Agency has no control over the policies and ranking algorithms of search engines with respect to the type of sites and/or content that they accept now or in the future. Client's web site may be excluded from any search engine or directory at any time at the sole discretion of the search engine or directory.
 - ii. Due to the competitiveness of some keywords/phrases, ongoing changes in search engine ranking algorithms, and other competitive factors, Agency does not guarantee No.1 positions or consistent top positions for any particular keyword, phrase, or search term.

- iii. Google has been known to hinder the rankings of new websites (or pages) until they have proven their viability to exist for more than “x” amount of time or have enough back link strength. Agency assumes no liability for ranking, traffic, indexing issues related to such penalties. Consequently, client understands that ranking new websites is much more difficult than ranking old and established sites and they should not have unrealistic expectations about rankings, traffic and revenues.
- b. Client may be charged an additional fee for making these updates, based on the hourly rate of \$135 per hour.
 - vi. Client acknowledges that any of the online advertising networks, social media sites, search engines, directories or other resources may reject, block, prevent or otherwise stop accepting submissions for an indefinite period of time.
 - vii. Client acknowledges that online advertising networks or search engines may drop listings from its database for no apparent or predictable reason. Agency shall re-submit resources to the search engine based on the current policies of the third-party advertising network in question.
 - viii. Agency will endeavor to make every effort to keep client informed of any changes that Agency is made aware of that impact any of the online marketing, social media campaign and strategy and the execution thereof under this Agreement.
 - ix. Client acknowledges that Agency cannot guarantee the exact placement of client's advertising; its availability or availability related to the funds in the client's account.
 - x. Cost for digital media advertising are additional and paid directly to third-party provider. Payment for media that Agency is running on behalf of Client shall be paid for in advance of running. In the event that there is a lag in payment or lack of adequate funds in a third-party account (e.g. Google, Facebook, Yahoo), Agency reserves to right to pause advertising until accounts are made whole.
 - xi. Development of text ads, image ads, video ads, and/or banner ads in support of online marketing or paid social media campaigns will be outlined specifically as a part of the deliverables in the strategy with Agency.
 - xii. Agency does not offer any refunds for SEO or digital marketing campaigns (SEO, PPC, Shopping Feeds, Email Marketing, Re-marketing, Content Marketing, Blogging, Social Media).
- 12. Intellectual Property Rights.** All advertising artwork and copy which represents the creative effort of the Agency and/or utilization of creativity, illustrations, labor, composition or material furnished by it, is and remains the property of the Agency, or the relevant third party from whom the Agency has acquired a right of use, including all rights of copyright therein. Client understands and agrees that it cannot authorize photographic or other reproductions, in whole or in part, of any such advertising copy for use in any other advertising medium without payment for creative services to the Agency. All logos, website and social media content is considered to be owned by the Client once it has received final approval to go live and payment in full has been received and may be reused, shared and reproduced by the Client.
- 13. Advertising Content.** The Agency may, in its sole discretion, edit, alter, omit, reject or cancel at any time any of Client's digital advertising products or services to meet industry standards or Client's budget. All digital advertising placements are at the option of the Agency, unless a specific placement is purchased by the Client. Failure to meet placement requests will not constitute cause for adjustment, refund, make good, termination or cancellation of this Agreement.
- 14. Disclaimer of Warranties.** To the maximum extent permitted by applicable law, Agency and its suppliers disclaim all warranties not expressly set forth in this document, whether express or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose, with regard to Agency services.

- 15. Indemnity:** Client agrees to indemnify and hold harmless Agency, its owners and employees from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to Agency's use of materials furnished by Client (including but not limited to, logos, slogans, trademarks, written content, photographs, video, music and fonts). Information or data obtained by us from you to substantiate claims made in marketing deliverables shall also be deemed to be "materials furnished by you." Such claims may include claims for invasion of privacy, defamation, patent, trademark, copyright or other intellectual property claims. Additionally, Client agrees to indemnify and hold harmless Agency, its owners and employees against any and all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to business ideas, innovations, concepts, websites, web-based applications and the like that Client has generated and has asked Agency to develop or implement. For example, if you have an idea for a web application, we develop it, and it is determined that the application's functionality violates another company's patent, you will indemnify Agency for any claims instituted by the third party. Agency does not take responsibility for determining whether your business ideas, business plans, concepts or innovations may interfere with another party's rights or are otherwise in compliance with applicable law. You warrant that any business ideas, business plans, concepts or innovations that you have presented to Agency and asked Agency to create deliverables for are compliant with applicable federal, state and local laws, rules and regulations.
- 16. Limitation of Liability:** IN NO EVENT SHALL AGENCY BE LIABLE TO CLIENT FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS, LOSS OF DATA OR LOSSES AS A RESULT OF DISCLOSURE OF USER CONTENT OR OTHER DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH AGENCY'S PRODUCTS OR SERVICES IN NO EVENT SHALL THE AGGREGATE LIABILITY OF AGENCY EXCEED ANY COMPENSATION PAID BY YOU TO AGENCY FOR ITS PRODUCTS OR SERVICES.
- 17. Excusable Delays.** The Agency will not be liable for any damages related to delay or failure to perform due to causes beyond its control, including but not limited to, fire, strike, work stoppage or other labor interruption, freight embargo, terrorism, sabotage, war, civil disturbance governmental action, rules or regulations, failure of machinery, equipment or information systems, failure of suppliers and digital partners, the elements, flooding, power outages or interruptions or acts of God. The Agency's inability or failure to perform will not constitute a breach of this Agreement. Performance by the Agency of its obligations under this Agreement will be suspended during this type of delay or failure to perform. The Client may, however, terminate this Agreement if suspension lasts more than thirty (30) days.
- 18. No Waiver.** The Agency's failure to insist upon the performance by the Client of any term or condition of this Agreement or to exercise any of the Agency's rights under this Agreement on one or more occasions will not result in a waiver or loss of the Agency's right to require future performance of these terms and conditions or to exercise its rights in the future.
- 19. Assignment.** Agency may assign, delegate or subcontract any rights or obligations under this Agreement.
- 20. Governing Law/Venue:** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas and not the principles of conflicts of law thereof. The Parties agree that the venue for any action arising out of this Agreement will be Galveston County, Texas.
- 21. Severability.** If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the other provisions herein will remain in full force and effect in such jurisdiction and will be liberally construed to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision of this Agreement in any jurisdiction will not affect the validity or enforceability of any such provision in any other jurisdiction.

- 22. Miscellaneous.** All covenants and agreements of the parties made in this Agreement will survive termination or expiration of this Agreement. This Agreement and the Agency's current rate cards constitute the entire agreement between the parties and supersede and cancel any prior agreements, representations or communications, whether oral or written, between the parties relating to the subject matter of this Agreement. This Agreement may not be changed orally and may only be amended in writing and signed by both parties.
- 23. Authority.** The person(s) signing this Agreement certifies that (s)he is lawfully authorized to purchase services on behalf of their respective company.
- 24. Execution and Term.** Terms and conditions of this Agreement are binding on both parties on the date the Agreement is signed and/or payment is made and continue for a period of 12 months. Upon completion of the 12 month period, services will continue on a month-to-month basis until Client provides a written 30 day cancellation notice.

Client Agreement

CONTRACT TO COMMENCE WORK

CLIENT APPROVAL & CONTACT INFORMATION

I have read and accept the above Proposal and Service Terms. I authorize Empire Advertising & Design, LLC to proceed with the project as described herein.

Package/Service Selection: _____

Contract Amount: _____ Term: _____

Signature _____ Date _____

Print Name _____ Title _____

Company _____

Street Address _____

City _____ State _____ Zip _____

Company Representative _____

Phone Number _____ Email _____

EMPIRE ADVERTISING & DESIGN, LLC

We agree to provide the services as described herein.

Signature _____ Date _____

Print Name _____ Title _____