

Service Terms

GENERAL AGREEMENT

Empire Advertising & Design, LLC (dba Empire Creative Marketing) and Client, do hereby mutually agree to the following terms and conditions as the sole basis under which Empire Advertising & Design accept the assignment to record the production described in this proposal, and Client, as evidenced by his/her signature, does hereby accept the following terms and conditions:

1. **Basic Design Rate.** We are glad to provide a written estimate of projected costs for each project before they commence. For projects that are billed at a flat rate, a specific project scope will be provided that outlines the services and items included. Work beyond the project scope is subject to additional fees. Projects may also be billed at our hourly rate for design and development work. We recognize the need for budget control, and we will provide verbal or written reports on time as the project progresses. Billable time on projects includes all time spent directly on the Client's project, including: project research and development, Client consultations and meetings, design work, revisions, proof output, preparing and sending files to print, coordinating with sub-contractors, travel time, troubleshooting and communications (phone, email, and in person).
2. **Contingency Costs.** cover elements of the project not covered by the contract and may include:
 - a. Rush charges for projects with quick deadlines
 - b. Charges for delayed payment (see payment terms)
 - c. Charges for changes to the project outside the parameters agreed upon
3. **Expenses** are incurred when the project requires use of materials or vendors other than design work performed by EMPIRE ADVERTISING & DESIGN, LLC (DBA Empire Creative Marketing). Expenses may include:
 - d. Printing, color proofs, film, extra paper (if not included in printing) and other pre-press production items
 - e. Stock Photo and/or Clip art purchases specifically related to the project
 - f. Shipping/pickup/delivery costs
 - g. Website hosting, SSL Certificates and domain name registration fees (unless included in a package)
 - h. Website stock template, paid plug-ins and scripts
 - i. Sub-contracting, other vendor costs, and project management fees
4. **Billing and Payment.** Project time is billed in 15 minute increments, and calculated by rounding up to the nearest 15 minutes each day. Unless otherwise negotiated, a 50% deposit of estimated project costs are due upon beginning a project and contract signing (\$100 minimum). Payment of the deposit must be made before any work is started on a project. For projects under \$2,000, the balance of the project costs will be due upon project completion. For projects that exceed \$2,000, at Empire's discretion, the Client will be billed every time \$2,000 has accrued, or on a monthly basis for time spent on the project during that month, or at Empire's discretion. Empire reserves the right to invoice Client at any time if project extends beyond projected completion date, or if the number of billable hours on the project exceeds the estimated project time. All invoices are due and payable upon receipt and must be paid UPON COMPLETION of project, unless otherwise specified in the contract. Preferred payment is by check payable to Empire Creative Marketing. 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. 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.

- 5 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.
- 6. Project Deadlines and Rush Fees.** Empire will schedule the Client's project into their production schedule on a standard turn-around time unless otherwise requested. If Client has a specific deadline for project completion, Client must make Empire aware of the deadline in writing. Empire will make every reasonable effort to complete Client's project within the Client's desired timeline, however jobs that must be completed sooner than standard estimated time are subject to rush charges for design, development and other services, as well as for printing and production.
- 7. Project Cancellation.** Should Client or Empire stop the project at any time during the design or development period, Client will be invoiced for design work completed up to the point of termination at our standard hourly rates, plus any expenses. Cancellation fees may apply as determined by Empire.
- 8. Retainer Cancellation.** 30-day notice is required for any retainer based services. Early cancellation will incur fees based on retainer terms and conditions.
- 9. 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 except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.
- 10. Online Advertising and Marketing Services.** 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 the Client's information with any business other than in the course of securing online advertising and marketing services on your behalf.
- 11. Advertising Material.** The Client represents that the material and information they provide to Agency is truthful, not misleading, and that they have the authority to represent the product and service information to the Agency.
- 12. 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.
- 13. 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.

- 14. Artwork.** Upon completion of the project, and upon full payment of all fees due, Empire grants to Client the exclusive, perpetual and worldwide right and license to use, reproduce, and display the Final Art in connection with the Project as defined in this Proposal and in accordance with the terms and conditions of this Agreement. Upon payment, Empire will provide Client with Final Art in PDF, JPG, TIFF, EPS or other digital and/or printed format per Proposal. Empire retains all rights to the native working files and source code. Unless otherwise negotiated in advance, Client may elect to purchase the native working files from Empire at the industry standard rate of 300% of the final design fee set forth in the Proposal.
- 15. 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 the 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.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.

20. 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.

21. 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.

22. Assignment. Agency may assign, delegate or subcontract any rights or obligations under this Agreement.

23. 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.

24. 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.

25. 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.

26. Authority. The person(s) signing this Agreement certifies that (s)he is lawfully authorized to purchase services on behalf of their respective company.

27. 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.

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 _____