

RETAINER AGREEMENT

THIS RETAINER AGREEMENT (this "Agreement") is dated _____ 20____, ("Effective Date"), and is by and between _____ ("Client") whose mailing address is _____; and _____ ("Service Provider") whose mailing address is _____. The parties hereto are sometimes referred to herein as a "Party" or the "Parties."

RECITAL

WHEREAS, Service Provider is a specialist or has particular expertise in the field or area of Services contemplated herein; and

WHEREAS, upon the terms and conditions set forth herein, Client desires to engage Service Provider to provide the Services set forth herein, and Service Provider desires to perform same.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

1. Description of Services; Scope. Upon the terms and conditions set forth herein, Client hereby engages Service Provider to perform the following services (the "Services"), and Service Provider agrees to perform and render same:

If applicable, the scope of Services hereunder expressly excludes the following:

2. Term. The term of this Agreement ("Term") shall commence on _____, and shall continue on a month-to-month basis.

3. Termination. This Agreement shall be terminated by either Party on _____ days advance notice to the other Party.

Check box, as applicable:



Service Provider shall terminate this Agreement immediately at any time if Client fails to pay for the Services or breaches any other material term of this Agreement. Service Provider shall be reimbursed for any invoices and Services performed but for which Service Provider has not been paid.

Client shall terminate this Agreement immediately at any time if Service Provider fails to provide the Services or breaches any other material term of this Agreement. Client shall be reimbursed for any compensation paid for the Services that were not received.

Other termination rights of the Parties:

3. Retainer. A retainer payment of \$ _____ per month shall be paid to Service Provider before commencement of the Services. Service Provider shall invoice Client on the _____ day of every month for the Services performed and all pre-approved expenses incurred during the previous month. Client shall pay the invoice within _____ days of the date on the invoice.

Payments shall be sent as follows:

Service Provider shall provide Client with a detailed description of its work rendered and, if applicable, the amount of time spent on each work item. This detailed description shall be provided in connection with each retainer payment hereunder or as otherwise agreed by the Parties.

5. Professional Licenses. Service Provider represents and warrants to Client that Service Provider possesses all valid and current licenses, permits, and approvals to perform the Services contemplated herein if any are required. Service Provider shall comply with the policies, rules, and standards of the Client, as may be amended from time to time, and shall perform the Services in a professional manner, faithfully, diligently, in good faith and commercial reasonableness, and in furtherance of the best interests of the Client. In the performance of the Services, Service Provider shall comply with all applicable laws, rules, and regulations. Client shall communicate to Service Provider any special requirements as may be applicable to the project as contemplated herein.

6. Confidentiality and Nondisclosure. In the performance of the Services, Service Provider may become privy to, or otherwise observe or learn about confidential or proprietary information related to the Client's or other parties' business and plans (hereinafter collectively, the



“Confidential Information”). Service Provider acknowledges and agrees that the Confidential Information constitutes valuable assets of the Client or others, and that except for disclosures required by applicable law, and information which is a matter of public record, Service Provider shall maintain as confidential, and shall not, during the Term of this Agreement or any time after the termination of this Agreement, disclose any Confidential Information to any person or use any Confidential Information for the benefit of Service Provider or any other person, except with the prior written consent of the Client. Prior to any disclosure of Confidential Information, Service Provider shall notify the Client of the intended disclosure, and shall cooperate with the Client in seeking and obtaining a protective order or other means of protection relating to such prospective disclosure.

7. Noncompetition.

Check box, as applicable:

Service Provider hereby agrees to the following non-competition covenant:

Throughout the Term, Service Provider will not (whether alone or with another partner and/or business entity) begin or engage in a competing business with Client which offers for sale or solicits the sale of services and/or products substantially similar to those sold or provided by Client. Service Provider will not in any way use Client’s database, information, or files for Service Provider’s purposes outside of the scope of this Agreement. Throughout the Term, Service Provider will not work for a competitor of Client, whether as an employee or independent contractor. Service Provider agrees that the foregoing covenant is reasonable and is necessary to protect the legitimate business interests of Client.

The noncompetition covenant shall not apply.

8. Taxes. Service Provider shall be solely responsible for and shall timely pay when due all withholding taxes, Social Security, state unemployment, and other taxes and impositions of any kind or nature relating to Service Provider and Service Provider’s business, employees, agents, and permitted subcontractors. Service Provider shall timely pay when due all applicable sales and use taxes on the labor provided and materials furnished or otherwise required by law in connection with the Services hereunder. Service Provider acknowledges and understands that Client shall not remit tax withholdings on Service Provider’s behalf.

9. Satisfaction by Client. If Client determines that Services are deficient, defective, or incomplete in any fashion (any of the foregoing, a “Deficiency”), Client shall have the right, in addition to all other rights that may be available to Client whether at law or in equity, to elect, at its sole discretion to: (a) notify Service Provider of the Deficiency, in which event Service Provider shall promptly correct such Deficiency; or (b) retain a third party or undertake to perform the cure of the Deficiency itself, in which event the Compensation associated with such deficient Services shall be deemed not earned by Service Provider and shall be reimbursed to Client.



10. Time is of the Essence. Service Provider acknowledges that time is of the essence in the performance of all Services hereunder. Service Provider shall promptly commence performance of the Services on the schedule agreed upon between Service Provider and Client and shall diligently perform and complete same in accordance with the requirements hereof. If Service Provider is delayed or anticipates being delayed in the commencement or completion of the Services, Service Provider shall promptly notify the Client of same.

11. Independent Contractor Relationship. Service Provider acknowledges that Service Provider is an independent contractor and is not an agent, partner, joint venturer, or employee of Client. Service Provider shall have no authority to bind or otherwise obligate the Client in any manner, nor shall Service Provider represent to any third party that it has a right to do so. Service Provider further agrees that in the event the Client suffers any loss or damage due to violation of this provision, Service Provider shall indemnify and hold harmless the Client from any such loss or damage. Upon request by the Client, the Service Provider shall provide all applicable and valid documentation required by the Client including but, not limited to, a Form W-9, this Agreement duly executed by Service Provider, and a current Certificate of Insurance evidencing Service Provider's maintenance of the required coverages herein, if any.

12. Insurance.

Check box, as applicable:

Proof of Insurance Required. Throughout the Term of this Agreement, Service Provider shall maintain customary business owner's insurance at levels and with insurers reasonably satisfactory to the Client, including coverage for professional liability/errors and omissions, general liability, business interruption, vehicle coverage, worker's compensation, and crime, as applicable. If requested, the professional liability/errors and omissions policy and the general liability policy shall name the Client as an additional insured. Service Provider shall provide the Client with appropriate certificates of insurance, evidencing Service Provider's insurance coverage hereunder.

Proof of Insurance Not Required.

13. Return of Documents. Service Provider acknowledges and agrees that all originals and copies (including electronic copies), and any summaries or notes thereof, of records, reports, documents, lists, plans, memoranda, notes, and other documentation related to the business of the Client or its clients, or containing any Confidential Information, are and shall be the sole and exclusive property of the Client. To the extent Service Provider comes into possession of any such items, Service Provider shall promptly return same to the Client upon demand, and in any event shall return same upon the termination or expiration of this Agreement.

14. Assignment; Delegation of Duties. Service Provider shall not assign its rights under this Agreement or delegate any of its duties hereunder, unless any such assignment or delegation is approved in advance in writing by the Client.



15. Indemnity. Service Provider shall indemnify, defend and hold Client harmless from any breach by Service Provider of this Agreement, and for any loss, claim, demand, or liability caused by or resulting from the Services, unless to the extent attributable to the fault, negligence, or willful misconduct of Client.

16. Additional Terms and Conditions. The parties hereby agree to the following additional terms and conditions: _____

17. Miscellaneous.

a. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

b. In the event of a default under this Agreement, the defaulting party shall reimburse the non-defaulting party for all costs and expenses reasonably incurred by the non-defaulting party in connection with the default, including without limitation, reasonable attorney’s fees and costs. Any dispute hereunder shall be resolved through binding arbitration, pursuant to the commercial arbitration rules of the American Arbitration Association. The prevailing party in any such action or proceeding shall be entitled to recovery of all costs and fees incurred in connection with such action or proceeding.

c. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

d. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of _____.

e. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all parties.

f. Any notice or other communication hereunder may be sent by SMS text, email, or US mail to the intended recipient thereof, to the addresses and/or other contact information set forth below, and shall be deemed delivered and received upon confirmation of receipt (in the case of email or SMS text), or three business days after posting to US mail (in the case of mail).

Client Contact Information: _____



Service Provider Contact Information:

IN WITNESS WHEREOF, the parties execute this Agreement and agree to be bound by the terms hereof.

Client Signature: _____

Name: _____

Date: _____

Service Provider Signature: _____

Name: _____

Date: _____

