

THIS AGREEMENT is made this _____ day of _____, _____ by and between

Your Company ("The Studio") and _____ ("Client").

TERMS AND AGREEMENTS

In consideration of the mutual covenants set forth in this Agreement, Client and The Studio hereby agree as follows:

1. CREATION OF THE PROJECT AND THE SPECIFICATIONS

- (a) The Project is the project that is detailed in the creative brief document (Specifications) that is attached to this Agreement. The Client accepts the details, timelines and fees in the Specifications by signing this Agreement.
- (b) The Studio agrees to create the Project according to the Specifications.
- (c) The Studio will use its best efforts to produce the Project to the highest possible standards of production for the specified budget.
- (d) Subject to the Specifications, The Studio shall exercise sole discretion in the hiring and firing of cast, crew and other production staff.

2. RESPONSIBILITY FOR ORIGINAL MATERIAL

- (a) Materials provided to The Studio for use in fulfilling the Project ("the Materials") may include, but are not limited to: Pictures, Film, Slides, 8-mm and 16-mm Film, Videotapes, Audio, Artwork, Motion Graphics, 3D Animation, Digital Media or other source materials required for inclusion in the Project.
- (b) The Studio is not responsible for lost or damaged materials unless solely arising from the negligence of The Studio. If The Studio is found liable, any compensation due to Client shall extend only to the cost of replacing the Materials in their raw or stock format.
- (c) Services provided to Client under this Agreement may include the use of sub-contractors and third-party services. Client agrees to indemnify and hold The Studio harmless from any and all claims for any loss, damage or delay to the Materials or Project while in transit or in the possession of third-party services or sub-contractors and agrees that damages shall be limited to replacement or replacement cost of the raw original material and media provided to The Studio.

3. DELIVERY OF PROJECT

- (a) Subject to the provisions of this clause, The Studio will use all reasonable skill and effort to create the Project. The Studio will use reasonable efforts to deliver to Client the completed Project no later the date outlined in the Specifications, but failure to deliver by this date is not a breach of this Agreement.
- (b) Client must provide all requested materials and instructions to The Studio in a timely manner. Client acknowledges and agrees that any delay in the completion of the Project due to actions or negligence of Client, transportation delays, illness, or circumstances outside the control of The Studio shall alter the delivery date. The Studio will make a reasonable effort to notify Client of any delays to the estimated delivery date as soon as possible.
- (c) The Project will only be delivered if full payment has been made by the Client.
- (d) Original materials provided to The Studio by Client will be returned only upon full payment of the Fees by the Client, to the last known address for Client. It is Client's responsibility to keep their address details updated with The Studio.

3.1 PROOFING

- (a) Proofs will be presented for Client approval at completion. If revisions are required, a request must be made when client has reviewed the proofs. Client is entitled to ONE set of revisions.
- (b) Revisions that are reasonable and within the original scope of the Specifications will be completed without further Fees (apart from any fees paid to third parties) being applied. The Project is considered completed when these edits are made based upon Client's revisions.
- (c) Revisions that are unreasonable or outside the scope of the Specifications will be quoted on separately. Fees for these revisions must be paid upfront before work is commenced.
- (c) Proofs may be provided to Client in formats that differ from the final output and it is not and should not be construed as an indicator of the quality of the completed Project. The Client acknowledges that colors, printing, quality, media type or any other element presented in the proof to Client may change upon final delivery and shall not constitute a breach or material deviation from the Specifications.

3.2 ADDITIONAL EDITING AND CHANGES

- (a) Once the Specifications are accepted by the Client (and signing of this Agreement is deemed acceptance of the Specifications) any further requested amendments to the Specifications shall incur additional fees. These additional fees will be billed at \$____ per hour inc. GST and are payable upon completion of the Project and prior to delivery of the project.
- (b) All additional amendments must be submitted and approved by both parties in writing by approved Contract Change form.

3.3 COPIES OF PROJECT FILES AND MASTERS OF SOURCE MATERIAL

- (a) The Studio is not responsible for maintaining any copies of Project source files, masters, materials or other media created by The Studio for Client under this Agreement after completion and delivery of the Project. It is Client's sole responsibility to create back-up copies of any Project files received in order to preserve the integrity of their Project files and protect against unforeseen loss.
- (b) All masters, film, tapes or other source materials shall remain the exclusive property of The Studio and will only be made available to Client for an additional fee.

3.4 REPRODUCTION OF PROJECT (CHOOSE THE ONE(S) THAT APPLY)

Upon payment of all Fees owing to The Studio, Client is granted full and unlimited reproduction rights to the Project.

Client is granted a one-time, limited use reproduction right for the Project in exchange for the Fee paid to The Studio. Client must receive the written consent of the Studio prior to reproducing the Project.

The Studio retains the right to reproduce the Project in any form for marketing, future publications, competitions or other promotional uses. The Studio shall at no time reproduce the Project for use in commercial means or for-profit use.

4. PAYMENT

- (a) The Client agrees to pay a non-refundable booking retainer Fee in the amount of \$_____ to secure the services of The Studio at the time and on the date specified in the Specifications. This retainer Fee must be paid within 3 days of signing this Agreement. The balance of the Fee and all additional applicable fees are to be paid upon the completion of Project and prior to delivery of the Project, within 5 days of receipt of the invoice. The Studio accepts payment of the Fee by Cash, Cheque, Credit Card or Direct Deposit into The Studio's nominated account. The Client acknowledges and agrees that The Studio will not provide their Services or deliver the completed Project until such time as The Studio receives all Fees as cleared funds.
- (b) **In the event the Fees are not paid by the dates prescribed in this Agreement, then The Studio may:**
 - (i) Cease providing their Services until such time as the Fee is paid;
 - (ii) Withhold the Proof, completed Project or any other file, artwork or source created by The Studio;
 - (iii) Terminate the Contract; and/or
 - (iv) Commence legal action.
- (c) **The Client acknowledges that The Studio may impose the following additional charges:**
 - (i) Editing charge at the rate of \$_____ per hour for requested changes to the completed Project after the completed Project has been approved by the Client or delivered to the Client;
 - (ii) Travel charge at the rate of \$_____ per kilometer where the location of the Project production is more than fifty (50) kilometers from The Studio's location;
 - (iii) Overtime charge at the rate of \$_____ per hour where The Studio is required to continue to provide its services after a 9 hour day;
 - (iv) A Reproduction charge of \$_____ for additional copies of the completed Project.
 - (v) Reimbursement of receipted parking or delivery fees.

5. THIRD PARTY AND OTHER COSTS

Client is responsible for all receipted and approved third-party and additional costs that The Studio may incur in the development of this Project.

6. INDEMNITY AND RELEASE

The Client indemnifies and releases The Studio from any claims with respect to:

- (i) Loss or damage to any project related materials whilst in the possession of The Studio or any third party;
- (ii) Loss or damage of the completed Project incurred whilst the completed Project is in storage awaiting collection by the Client;
- (iii) Loss or damage suffered as a result of The Studio terminating this Contract;
- (iv) The Studio's failure to complete the Project due to events outside The Studio's control;
- (v) The Studio's failure to capture any key shots (as defined in the Specifications) due to events outside The Studio's control;
- (vi) Delay or loss of shooting time due to events experienced by the Client;
- (vii) Discoloration, degradation of dyes or inks or faded colors in the completed Project; and
- (viii) Malfunction of the VHS tapes, DVD's, Blu-rays and CD-R's of the completed Project once they have been approved by the Client and delivered to the Client, unless the Client notifies The Studio in writing of the malfunction within twenty four (24) hours of collecting the same.

In the event The Studio is unable to provide its services due to fire, extreme weather, transportation issues, equipment failure, theft, damage, illness, injury, medical reasons, emergency, scheduling conflicts or any other act outside The Studio's control then The Studio may, in its absolute discretion, contract with a third party contractor to provide the Services. In the event a third party contractor is unable to provide the said services, then The Studio may elect to terminate the Contract. The Client will receive a full refund of any moneys paid under this Contract in the event the Contract is terminated in this manner.

7. LIMITED WARRANTY AND LIMITATION ON DAMAGES

- (a) The Studio warrants the Project will conform to the Specifications. If the Project does not conform to the Specifications, The Studio shall be responsible for the timely correction of the Project, at The Studio's sole expense and without charge to Client in order to bring the Project into conformance with the Specifications.
- (b) This warranty shall be the exclusive warranty available to Client. Client waives any other warranty, express or implied to the extent permitted by law.
- (c) Client acknowledges that The Studio is not responsible for the results obtained by Client's use of any part of the Project. Client acknowledges that The Studio is not responsible for the Project after completion of the Project.
- (d) Except as otherwise expressly stated herein, Client waives any claim for damages, direct or indirect, and agrees that its sole and exclusive remedy for damages (either in contract or tort) is the return of the Fee paid to The Studio as set forth in Payment section of this Agreement.

8. INTELLECTUAL PROPERTY

- (a) Client agrees and confirms that it owns or licenses the Intellectual Property Rights in and to all material provided by Client to The Studio for the purpose of the Project and that the material does not infringe any third party rights.
- (b) The Studio owns the Intellectual Property Rights in and to any quotation and specification documents, proposals and other documents provided by The Studio.
- (c) Upon payment by Client of all outstanding Fees and subject to subclause 8(d), The Studio assigns to Client all right, title and interest, including all Intellectual Property Rights, in the Project created for Client pursuant to the Specifications.
- (d) The Studio retains a worldwide, royalty free, perpetual license to use the Project for marketing, future publications, competitions or other promotional uses.

9. INDEPENDENT CONTRACTOR

The Studio is retained as independent contractor for the term of this Agreement. The Studio will be fully responsible for payment of its own taxes on all income earned under this Agreement. Client will not withhold or pay any income tax, social security tax, or any other payroll taxes on The Studio's behalf. The Studio understands that they will not be entitled to any fringe benefits that Client provides for its employees generally or to any statutory employment benefits, including without limitation worker's compensation or unemployment insurance.

10. MATERIALS, LOGOS, GRAPHICS AND OTHER COLLATERAL

Client agrees to make available to The Studio for the purpose of the Project such graphical elements and materials as Client and The Studio may agree in writing for such purpose. Failure to provide The Studio with Materials in the requested formats may result in additional delays or fees in addition to those stated in Payment section of this Agreement.

11. GENERAL PROVISIONS

11.1 ENTIRE AGREEMENT.

This Agreement contains the entire Agreement between the parties relating to the subject matter hereof and supersedes any and all prior Agreements or understandings, written or oral, between the parties related to the subject matter hereof. No modification of this Agreement shall be valid unless made in writing and signed by all of the parties hereto.

11.2 GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of YOUR STATE. Exclusive jurisdiction and venue shall be in the YOUR STATE Courts.

11.3 BINDING EFFECT.

This Agreement shall be binding upon and ensure to the benefit of Client and The Studio and their respective successors and assigns, provided that The Studio shall not assign any of their obligations under this Agreement without Client's prior written consent.

11.4 WAIVER.

The waiver by either party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance with every term and condition of this Agreement.

11.5 GOOD FAITH.

Each party represents and warrants to the other that such party has acted in good faith, and agrees to continue to so act, in the negotiation, execution, delivery, performance, and any termination of this Agreement.

11.6 PAYMENT MILESTONES.

In the event Client fails to make any of the payments set forth on Payment section of this Agreement within the time prescribed in Payment section of this Agreement, The Studio has the right to immediately cease all work on the Project until payment in full is paid.

11.7 INDEMNIFICATION.

Client warrants that everything it gives The Studio to include in the Project is legally owned or licensed to Client. Client agrees to indemnify and hold The Studio harmless from any and all claims brought by any third-party relating to any aspect of the Project, including, but without limitation, any and all demands, liabilities, losses, costs and claims including attorney's fees arising out of use or publication of the Project, material supplied by Client, copyright infringement, and any other claims related to the services provided by The Studio under this Agreement.

11.8 USE OF PROJECT FOR PROMOTIONAL PURPOSES.

Client grants The Studio the right to use the Project for promotional purposes and/or to cross-link it with other marketing developed by The Studio.

11.9 RIGHT TO STYLE OR TO MAKE DERIVATIVE WORKS.

The Studio has the exclusive rights in making any derivative similar works of the Project and any similarities between Client's project and future projects constitutes The Studio's methods and style and shall remain the right of The Studio.

Each party represents and warrants that, on the date first written above, they are authorized to enter into this Agreement in entirety and duly bind their respective principals by their signature below:

EXECUTED as of the date first written above.

THE STUDIO

By: _____

Title: _____

Date signed: ____ / ____ / ____

CLIENT

By: _____

Title: _____

Date signed: ____ / ____ / ____

DIRECT DEPOSIT DETAILS

NAME _____

Bank _____

BSB XXX XXX

Acc XXX XXX

CREDIT CARD AUTHORITY

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Expiry Date ____ / ____ Name on Card _____