



Products and Services Agreement

(Long form; not for fundraising)

This agreement is made as of **DATE** (the “Effective Date”), between Sierra Club (“SC”), having its principal place of business at 2101 Webster St., Suite 1300, Oakland CA 94612, and **FULL LEGAL NAME** (“Contractor”), having its principal place of business at **ADDRESS (NO P.O. BOX)**.

Please check one:

- CORPORATION** (C-Corp, S-Corp, B-Corp). Contractor represents that it is a corporation in good standing, incorporated in the state of **_State_**, with EIN# **_Number_**. Contractor will notify SC promptly if this should change.
- OTHER**. Contractor represents that it has completed SC’s independent contractor questionnaire truthfully and completely and provided an accurate W-9; and understands that SC may rely on this information to assess SC’s tax and other compliance obligations. Contractor shall notify SC’s Human Resources Department promptly in writing of any changes to the information Contractor has provided.

1. Key Terms

a. Products and Services:

Describe the products and/or services in detail, including first and last day of work (if relevant), and all Sierra Club expectations as to quality, quantity, milestones, deadlines, outcomes, etc.

Attach any relevant materials that describe what the contractor will do, such as proposals, quotes, schedules, or marketing materials such as websites or product descriptions that we expect the contractor to live up to. List each item here, for example: “The Services are further detailed in the attached documents: (1) Final Proposal (2) Schedule (3) Product ABC screen shot”

b. Payment:

Provide detailed fee and payment information, including when the contractor will issue invoices and whether any deliverables or milestones will be met. Attach additional pages if needed, and list them here. If possible, state that contractor will issue invoices for work completed “and approved by SC, which will not unreasonably withhold its approval.”

It is strongly recommended that you do not pay large sums up front. Instead, pay in installments as work is done. Ideally, no more than 25% would be due up front. At least 15% should be held back as a final payment, to be made “upon completion of the Service and approval by SC, which will not be unreasonably withheld.”

c. Invoices to be submitted as follows:

To whose attention, at what address? Any other instructions?

- d. Agreement expires on:

State the expiration date. Each contract should last no more than one year.

2. Services

- a. Contractor agrees to perform the Services described above.
- b. Contractor will supply all equipment and instrumentalities required to perform the Services under this agreement. Contractor will determine the method, details, and means of performing the Services. SC shall have no right to, and shall not, control the manner or determine the method of accomplishing the Services.
- c. Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the Services. Contractor shall ensure that any third party retained by Contractor shall comply with all of Contractor's obligations under this agreement. SC may not control, direct, or supervise Contractor's assistants or employees. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, workers' compensation insurance, Social Security, disability insurance and other applicable withholdings.
- d. Subject to all of the foregoing, SC will comply with Contractor's reasonable requests as necessary for the performance of the Services.

3. Compensation

- a. In consideration for the Services to be performed by Contractor, SC agrees to pay Contractor, upon receipt of invoice, as described above.
- b. SC shall be under no obligation to pay for any activities over and above the scope of the engagement or incremental cost not initially estimated by Contractor, unless Contractor has obtained SC's prior written approval for such additional hours or costs.
- c. SC will pay accurate, undisputed invoices within 30 days of receipt.
- d. Contractor shall be responsible for all costs and expenses incident to the performance of services for SC including, but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. SC shall not be responsible for any expenses incurred by Contractor in performing services for SC.

4. Independent Contractor

It is the express intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of SC. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between SC and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor agrees that it and its employees and/or subcontractors are not covered by SC's Worker's Compensation Insurance Policy, liability insurance policies, personnel policies, performance evaluation and compensation systems or any employee group benefits program. Contractor

shall retain the right to perform services for the general public during the term of this agreement.

5. Confidential Information

- a. "Confidential Information" means any information that is disclosed to Contractor directly or indirectly by SC, developed or obtained by Contractor as a result of its work for SC, and/or derived from any of the foregoing. Confidential Information shall include, but shall not be limited to: technical or non-technical data, compilations, trade secrets, copyrightable material, know-how, research, plans, products and services, information pertaining to SC employees, suppliers, members, donors, and supporters, software, developments, inventions, processes, security, technology, designs, configurations, marketing, finances, and other business information. Confidential Information does not include information which (i) is known to Contractor at the time of disclosure to Contractor by SC as evidenced by written records of Contractor, (ii) has become publicly known and made generally available through no wrongful act of Contractor, or (iii) has been rightfully received by Contractor from a third party who is authorized to make such disclosure.
- b. Contractor will not, during or subsequent to the term of this agreement, use SC's Confidential Information for any purpose other than the performance of the Services on behalf of SC, nor will Contractor disclose SC's Confidential Information to any third party. It is understood that said Confidential Information shall remain the sole property of SC.
- c. Contractor agrees that Contractor will not, during the term of this agreement, improperly use or disclose any proprietary information or trade secrets of any former or current employer or other person or entity with which Contractor has an agreement or duty to keep in confidence information acquired by Contractor, if any, and that Contractor will not bring onto the premises of SC any unpublished document or proprietary information belonging to such employer, person or entity unless consented to in writing by such employer, person or entity.
- d. Contractor recognizes that SC has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on SC's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Contractor agrees that Contractor owes SC and such third parties, during the term of this agreement and thereafter, a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the Services for SC consistent with SC's agreement with such third party.
- e. Upon the termination of this agreement, or upon SC's earlier request, Contractor will deliver to SC all Confidential Information in Contractor's possession or control, ensure that all copies and versions of Confidential Information in its possession or control are destroyed and, if requested by SC, certify such destruction.

6. Intellectual Property

a. Licensed Marks

Neither party may use the other's name, logo(s), or other indicia except as expressly authorized in an attached Licensed Marks Exhibit.

b. Intellectual Property Owned by SC

- i. All tangible and intangible things conceived, made, acquired, discovered, procured, recommended, or delivered by Contractor in connection with the Services, together with all intellectual property rights therein, are referred to collectively as "Work Product." Contractor agrees that all Work Product is the sole property of SC, and shall be deemed work-for-hire to the full extent permitted by law. Contractor further agrees to assign (or cause to be assigned), and does hereby assign, to SC all rights, title and interest in such Work Product, including but not limited to copyrights therein. This subsection 6(a)(i) does not apply to Work Product (if any) that is merely licensed to SC under subsections 6(b)-6(c) as described in an attached Intellectual Property Exhibit.
- ii. Contractor shall disclose all information, and execute all documents, that SC shall deem necessary or advisable to evidence, establish, protect, or maintain any intellectual property rights allocated to SC under this Agreement. Contractor further agrees that Contractor's obligations under this subsection 6(a)(ii) shall continue after the termination of this agreement.
- iii. Contractor agrees that if SC is unable because of Contractor's unavailability, mental or physical incapacity, or for any other reason, to secure Contractor's signature to apply for or to pursue any application for any United States or foreign patent, trademark, or copyright registrations of Work Product or portions thereof, then Contractor hereby irrevocably designates and appoints SC and its duly authorized officers and agents as Contractor's agent and attorney in fact, to act on Contractor's behalf to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patent, trademark, and copyright registrations thereon with the same legal force and effect as if executed by Contractor.

c. Intellectual Property Owned by Contractor and Licensed to SC (if any)

This subsection does not apply unless Contractor is retaining ownership of intellectual property, as described in an attached Intellectual Property Exhibit.

Upon delivery, Contractor shall be deemed to have granted SC a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to use, copy, reproduce, distribute, perform, display, sublicense (including through multiple layers of sublicensees), prepare derivative works of, make, have made, sell and export the items listed as "Contractor's Intellectual Property" in an attached Intellectual Property Exhibit (if any).

d. Third Party Intellectual Property Licenses Procured for SC by Contractor (if any)

This subsection does not apply unless Contractor is procuring licenses for SC from a third party, where the third party will retain ownership rights, as described in an attached Intellectual Property Exhibit.

Contractor shall procure for SC's use the items listed as "Intellectual Property Licenses Procured by Contractor" in an attached Intellectual Property Exhibit (if any). Except as otherwise agreed in writing, Contractor shall procure for SC a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to use, copy, reproduce, distribute, perform, display, sublicense (including through multiple layers of sublicensees), prepare derivative works of, make, have made, sell and export the listed items.

e. Documentation of Intellectual Property Rights

Prior to receiving its final payment, Contractor shall deliver such documentation of intellectual property rights and permissions as SC may reasonably request. Without limiting the foregoing, for deliverables intended for publication (in any medium or format), Contractor shall provide a rights bible comprising a written summary of all Work Product, along with copies of all licenses obtained from third parties, in a form acceptable to SC.

7. Representations and Warranties. Contractor represents, warrants and covenants that:

- a. Contractor has the right, power and authority to make and enter into and fully perform its obligations pursuant to this agreement and to grant to SC all of the rights herein granted to SC;
- b. The intellectual property referenced in Section 6 shall be adequate and sufficient to enable SC to carry out the purposes of this Agreement, and to fully exploit the license and other rights according to their terms. Neither such use, nor the Services themselves, shall infringe upon or violate any law, regulation, agreement or other rights of any kind, of any person or entity including, without limitation, rights affecting copyright, patent, trademark, trade secret, unfair competition, contract, defamation, privacy and/or publicity, or create any liability of any kind for SC;
- c. Creative works delivered by Contractor shall be original, and shall not have been exploited in any manner or medium, except as authorized by SC in writing in its sole discretion. There are (and will be) no liens, claims or encumbrances which might conflict with or otherwise affect any of the provisions of this agreement or SC's exercise of any rights granted herein. Contractor is aware of no circumstances that might prevent Contractor from fully keeping and performing all of their services, obligations, covenants and conditions to be kept or performed by them hereunder, and Contractor has not made nor will make any grant, assignment, commitment or do or permit any act which will or might interfere with or impair the full and complete performance of Contractor's services and obligations hereunder or SC's full and complete enjoyment and exercise of the rights and privileges granted herein;
- d. Contractor shall comply with all local, state or federal laws, rules, and regulations as may apply to Contractor's activities and obligations hereunder; and
- e. Any third party engaged by Contractor to fulfill any of Contractor's obligations will be bound by the obligations of Contractor set forth herein.

8. Indemnification

Contractor on behalf of itself and its employees, agents, contractors, subcontractors and other personnel (collectively, the "Contractor Parties") will defend, indemnify and hold SC, its affiliated and related entities, licensees, successors and assigns, and their respective officers, directors, agents, representatives, contractors and employees (collectively, the "SC Parties") harmless from and against any and all claims, losses, damages and expenses (including, without limitation, reasonable attorneys' fees and disbursements) (collectively, "Claims") directly or indirectly arising out of or resulting from (i) a breach or alleged breach by any of the Contractor Parties of their obligations, representations, warranties, covenants or undertakings under this agreement, or (ii) the development, production, distribution, advertising, promotion or use of the Work Product or Services performed or provided hereunder, including any Claim that any license, Work Product or service provided to the SC Parties or otherwise produced hereunder infringes, violates or misappropriates any rights of any third party (including copyright, patent, trademark, trade secret, license, or other proprietary rights or any right of privacy or publicity) or defames, libels or slanders any third party. Contractor shall also defend, indemnify and hold the SC Parties harmless against any and all liability imposed or claimed, including attorney's fees and other legal expense, arising directly or indirectly from any act or failure of any of the Contractor Parties, including all Claims relating to the injury or death of any person or damage to any property, or statutory or common law claims relating to employment discrimination or sexual harassment.

9. Insurance

Contractor agrees to acquire and maintain workers' compensation insurance for Contractor and for Contractor's employees as prescribed by state law. Contractor also agrees to acquire and maintain commercial general liability insurance in the amount of at least \$1,000,000 per occurrence and \$3,000,000 in aggregate for the term of this agreement. These insurance policies shall name SC as additional insured. Contractor shall provide proof of insurance to SC before commencing work.

10. Additional Documents

Contractor shall execute, verify, acknowledge and deliver any and all instruments or other documents which may at any time be deemed necessary or advisable to evidence, establish, maintain or protect any rights granted by or obligations of Contractor under this agreement. Contractor hereby irrevocably appoints SC the true and lawful attorney-in-fact of Contractor to execute, acknowledge and deliver any such assignment or instrument if Contractor shall fail or refuse to execute, acknowledge or deliver the same, in which event Contractor will promptly be furnished with copies of any and all such signed documents.

11. Assignment

Neither party may assign this agreement nor any duties or obligations under this agreement without the prior written consent of the other party.

12. Taxes

As Contractor is not an employee of SC, Contractor is responsible for paying all required state and federal taxes. SC will not withhold income tax (state or federal), or FICA (Social Security) from

Contractor's payments; and will not obtain any insurance (e.g., workers comp) or make any insurance contributions (e.g., unemployment or disability) on Contractor's behalf. Notwithstanding the foregoing, Contractor acknowledges that SC may be required by law to make withholdings on payments, and Contractor hereby consents to any such withholdings. In the event that any such withholding is required by law, SC will notify Contractor of the withholding requirements and will supply Contractor with any reports of such withholding as are required by law.

13. Values Statement

Contractor recognizes that inclusion, equity and justice are mission-critical values of SC. Contractor does not participate in discrimination, defined as unfavorable or unfair treatment towards an individual or group, based on their race, ethnicity, color, national origin or ancestry, religion, socioeconomic status, education, sex, marital status, parental status, veteran's status, political affiliation, language, age, gender, physical or mental abilities, sexual orientation or gender identity. Contractor further represents that it does not engage in any activities or communications that would be in conflict with SC's values as stated above.

14. Termination

This agreement shall terminate before it expires, in the following circumstances.

- a. SC may terminate for convenience at any time, by providing ten (10) days written notice to Contractor.
- b. Either party may terminate by providing five (5) days written notice if the other party:
 - Materially breaches any provision of this agreement;
 - Engages in theft, fraud embezzlement, dishonesty or similar behavior;
 - Does not diligently carry out its duties as required under this agreement; or
 - Sells, or prepares to sell, its business.
- c. The agreement will terminate automatically and immediately if:
 - Either party files for bankruptcy, or is the subject of an involuntary bankruptcy proceeding;
 - A party has a custodian appointed by a court of competent jurisdiction, or voluntarily assigns substantially all of its assets;
 - A party fails generally to pay its debts (excluding fees under this agreement) as they become due, or acknowledges in writing that it is unable to do so; or
 - Contractor is an individual or sole proprietorship, and is unable to perform its duties due to death or incapacity.
- d. Within 10 days of termination, Contractor shall deliver to SC all Work Product (including work in progress) and any SC property in Contractor's possession; deliver to SC any unearned advance payments or deposits; deliver to SC any other SC property in Contractor's possession; and fulfill its obligations regarding Confidential Information as set forth in Section 5(e).

15. Arbitration

- a. Except as provided in subsection (d), every dispute arising between SC and Contractor (including their agents and/or representatives) shall be resolved exclusively by arbitration, pursuant to the Federal Arbitration Act, 9 U.S.C. §§1-16, according to the then-existing Comprehensive Arbitration Rules & Procedures of the Judicial Arbitration and Mediation Services, Inc. (JAMS). The decision of the arbitrator shall be final, conclusive, and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction.
- b. The arbitration shall be conducted in Alameda County, California. The arbitrator(s) shall apply substantive (but not procedural) California law. The arbitrator and not any federal, state, or local court or agency shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, conscionability, or formation of this contract, including but not limited to any claim that all or any part of this contract is void or voidable.
- c. SC and Contractor shall each pay one-half of the costs and expenses of such arbitration through the conclusion of the arbitration, whereupon the arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses, court costs, witness fees, and attorneys' fees.
- d. The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgment of the powers of the arbitrator.
- e. By agreeing to these terms and conditions, each party is waiving its right to a trial by jury.

16. General Provisions

- a. Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested, or by overnight express courier. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two days after mailing.
- b. This agreement constitutes the entire agreement between the parties relating to its subject matter, supersedes all prior or contemporaneous agreements, and may be modified only by a written amendment signed by both parties. If any provision in this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

- c. This agreement is deemed executed in Oakland, California, and will be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law rules.
- d. The provisions of the sections captioned “Confidential Information,” “Intellectual Property,” “Indemnification,” “Arbitration Provisions,” “Termination,” and “General Provisions” shall survive any expiration or termination of this agreement.
- e. This agreement may be executed in print or digital counterparts, each of which shall be deemed a duplicate original, and all of which together shall constitute one instrument.

CONTRACTOR’S FULL LEGAL NAME
 (“CONTRACTOR”)

SIERRA CLUB (“SC”)

Authorized Contractor signature

Authorized Sierra Club signature

PRINT NAME & TITLE

PRINT NAME & TITLE

DATE SIGNED

DATE SIGNED

Licensed Marks Exhibit (optional)

LEAVE THIS FORM BLANK if trademarks are not being licensed.

The parties may use following (the "Licensed Marks"), solely for the purposes set forth in this Agreement, and subject to all the terms and restrictions below.

Company's Licensed Marks (if any): **Include their name and all their marks that we will use**

Sierra Club's Licensed Marks (if any): **Include our name and all our marks that they will use**

1. Each party agrees that all use of the Licensed Marks by a party ("the Using Party") shall be in the form and manner approved by the licensing party (the "Owning Party"), which approval shall not be unreasonably withheld, conditioned or delayed. The Using Party agrees to submit to Owning Party samples of each of its other proposed uses of the Licensed Marks prior to making any such use (e.g., without limitation, advertising, artwork, and promotional materials), and agrees that no such use shall be made until it has received Owning Party's written approval within ten (10) business days. The Using Party acknowledges the goodwill associated with the Licensed Marks and that Owning Party is recognized as a leader in its respective market and/or industry and that no use of the Licensed Marks pursuant to this Agreement shall be knowingly inconsistent with such goodwill and reputation.
2. All right, title and interest in and to the Licensed Marks shall be owned exclusively by Owning Party. Subject to the terms of this Agreement, Owning Party shall continue to have the sole unrestricted right to exploit the Licensed Marks in its sole discretion in any manner in perpetuity in any and all media throughout the world whether now known or hereafter devised with no further obligation whatsoever, financial or otherwise, to the Using Party or any third party; provided no such exploitation shall materially interfere with the Using Party's exploitation of the rights granted to it hereunder. Any use which the Using Party is permitted to make of the Licensed Marks pursuant to this Agreement shall be subject to the restrictions and approvals set forth elsewhere within the Agreement.
3. The Using Party confirms the sole ownership of the Licensed Marks by Owning Party and agrees that all use by the Using Party of the Licensed Marks shall inure solely to the benefit of Sierra Club and that no other intellectual property, other than the Owning Party Information, of the Owning Party is being licensed to the Using Party. The Using Party shall not at any time acquire any rights in the Licensed Marks or otherwise, except to the extent expressly granted herein, by virtue of any use or exploitation the Using Party may make thereof.
4. All rights in the Licensed Marks other than those specifically granted herein are reserved by the Owning Party for its sole use and benefit and exploitation in its sole discretion with no obligation whatsoever to the Using Party, financial or otherwise. Upon the expiration or termination of the Agreement for any reason whatsoever, the Using Party's limited rights in the Licensed Marks shall automatically expire and revert to the Owning Party for its sole use and disposition with no further obligation whatsoever, financial or otherwise, to the Using Party or any third party.
5. In the event the Using Party learns of any third party exploiting the Licensed Marks in violation of this Agreement, the Using Party shall use reasonable efforts to promptly notify the Owning Party. The Owning Party shall have the sole right of action against such party with respect to such exploitation.

Intellectual Property License Exhibit (optional)

LEAVE THIS FORM BLANK if there are no special Intellectual Property terms.

- I. Contractor will retain certain rights in the Intellectual Property described below. The applicable terms are set forth in Section 6(b).

If Sierra Club will merely license (not own) Contractor's IP, insert a description here of the IP that we will license and the Contractor will continue to own. For example, a Contractor may license certain photos or music to us, and reserve the right to also license them to others. Or they could have a standard web design or report template that they want to continue to own have the ability to use with other clients. Section 6(b) provides for default license terms. If they are not acceptable, spell out or attach the terms of the license.

- II. Contractor will procure third party licenses for Sierra Club to use the Intellectual Property described below, and the third party we retain certain rights in it. The applicable terms are set forth in Section 6(c):

If Contractor will procure a license (not outright ownership) that entitles Sierra Club to use IP owned by a third party, insert a detailed description here. For example, a Contractor could go out to a third party to obtain for us a license to use the third party's software, music, or other IP. Section 6(c) provides for default procurement terms. If you and the Contractor would like other terms to apply, spell them out here or attach the license terms and reference them here.