

Marketing Service Agreement

This Marketing Service Agreement, hereby known and referred to as the Agreement, shall be executed on this day, [SPECIFY DATE] BETWEEN:

[SPECIFY NAME OF CONSULTANT COMPANY], hereby known and referred to as the Consultant, is a company that is organized, existing, and operating under the laws of [SPECIFY STATE/PROVINCE] with its main office located at [SPECIFY LOCATION]

AND

[SPECIFY NAME OF CLIENT COMPANY], hereby known and referred to as the Client, is a company that is organized, existing, and operating under the laws of [SPECIFY STATE/PROVINCE] with its main office located at [SPECIFY LOCATION].

THE PARTIES ABOVE HEREBY AGREE TO THE TERMS AND CONDITIONS AS STATED BELOW:

1. TERMS AND DEFINITIONS

For all intents and purposes of this Agreement, the following terms shall be described and defined as follows:

1.1. "Agreement" shall constitute the entirety of this document, the proposal documents (if any), the Statement of Work (SOW), and other supplementary documentations such as exhibits and additional schedules as may be attached and incorporated herein.

1.2. "Client Content" shall mean all the materials, information, photographs, and any other creative contents that were provided for the use of the Parties.

1.3. "Copyrights" shall be defined to mean all property rights that were the original work of the Consultant expressed in a tangible medium of expression and as defined by the copyright laws of [SPECIFY COUNTRY].

1.4. "Deliverables" shall include all services and work product as mutually agreed upon by the Client and Consultant that are to be delivered to the Client by the Consultant in the form of media that is specified in the SOW.

1.5. "Consultant Tools" shall refer to all the tools developed and/or used by the Consultant in performing all services as agreed upon.

1.6. "Final Work" shall mean all the materials that are developed or created by the Consultant exclusively for the utilization of the Parties.

1.7. "Final Deliverables" shall mean all the final versions of the Deliverables as provided by the Consultant and approved and accepted by the Parties.

1.8. "Preliminary Works" shall mean all the materials that were created and developed by the Consultant which may or may not have been presented to the Client for consideration.

1.9. "Project" shall cover the scopes and purposes of the Parties' identified usage of the product.

1.10. "Consultation Services" or "Services" shall mean all the services and the work product to be provided by the Consultant to the Client as further described under Section 1.4.

1.11. "Third Party Materials" shall mean all third party materials that are incorporated into the Final Deliverables including but not limited to stock photography and illustrations.

1.12. "Trademarks" shall mean the trade names, words, symbols, designs, logos, or other devices or designs used to designate the origin or source of goods or services.

2. INTELLECTUAL PROPERTY PROVISIONS

2.1. CLIENT CONTENT

Client Content, including all the pre-existing Trademarks and copyright material, shall remain as the sole property of the Parties. The Client hereby grants the Consultant a nonexclusive, nontransferable license to use, reproduce, or modify the Client Content solely in connection with the Consultant's performance of the services as provided by the Consultant and the production of the Deliverables.

2.2. THIRD PARTY MATERIALS

All materials are the exclusive property of their respective owners. The Consultant is expected to inform the Client of all Third Party Materials that are incorporated into the

Final Work. Under such circumstances, the Consultant shall inform the Client of any need to license.

2.3. ASSIGNMENT OF COPYRIGHTS AND FINAL WORKS

Upon the completion of the Services and upon the full payment of all fees and reimbursements of all out-of-pocket expenses, the Consultant shall assign all rights and interests in the Final Work to the Parties. The Consultant shall offer all assistance and services necessary for the transfer of these rights.

3. FEES

3.1. In consideration of all the Services provided by the Consultant, the Client shall pay a sum amounting to what has been agreed upon in the Payment Terms and Schedules as set forth in Section 12 and/or in the SOW that is attached hereto and incorporated herein by reference. Unless explicitly specified in any part of this Agreement or its supplementary documents, expenses not listed in this Agreement may be reimbursed by the Client should the Consultant so request in writing and provided that the proper and detailed documentations of such can be presented.

4. TIMING AND ACCEPTANCE

4.1. TIMING

The Consultant shall prioritize the performance of the Services as agreed by the Client and shall undertake all reasonable efforts necessary to be able to complete such Services. The Client agrees that it shall review the Deliverables within the time identified for such and shall either:

- a. Approve and accept the Deliverables in writing and thereby, prompting them to become Final Deliverables; or
- b. Providing comments and suggested changes in writing to identify the concerns and objections of the Parties.

4.2. ACCEPTANCE

The Parties, within [SPECIFY NUMBER] ([SPECIFY NUMBER]) upon the receipt of each Deliverable, shall notify the Consultant of such in writing.

5. CLIENT RESPONSIBILITIES

The Client acknowledges that it is responsible for the performance of the following duties and responsibilities in a prompt and timely manner:

- a. The coordination of any decision-making with parties other than the Consultant;
- b. The provisions for the Client Content in a form suitable for the incorporation or reproduction of the Deliverables;
- c. The final proofreading pursuant to Sections 4.1 and 4.2.

6. RECOGNITION

The Consultant reserves the right to reproduce, publish, and display the Final Deliverables in their portfolios and websites, in galleries, in design periodicals, and in other media for the purpose of gaining recognition for their creative skills and for professional advancements.

7. CONFIDENTIAL INFORMATION

The Consultant understands that in order to execute and perform the services required by the Parties, they would be given access to certain information critical to the operations of the company of the Parties. This information is meant to be confidential and thus, the Consultant is subject to this confidentiality clause. They are prohibited from disclosing to any unauthorized party any information obtained from the duration of their work with the Parties.

8. RELATIONSHIP OF THE PARTIES INVOLVED

8.1. INDEPENDENT CONTRACTOR

The Consultant is not an employee of the Client but is instead an independent contractor and has no rights to claim partnership or joint ventures. Thus, the Consultant shall not be part of the Parties' roll of employees and they will not be subject to any benefits as the other employees unless the Client decides otherwise. They are also not authorized to enter into any agreement, contract, or deals for the Client nor can they represent the Client in any way.

8.2. NO EXCLUSIVITY

The Client expressly acknowledges that this Agreement does not create any sort of exclusive relationship between them and the Consultant. The Client may engage others to perform the same services of the same nature as those provided by the Consultant.

Similarly, the Consultant shall be free to offer their services to other companies, individuals or entities, provided they keep and honor the confidentiality clause of this Agreement.

9. WARRANTIES AND REPRESENTATIONS

The parties represent and warrant:

9.1. BY THE PARTIES

- a. That the Client owns all the rights, titles, and interests in the Client Content and they have the authority to permit the use thereof; and
- b. That the Parties, to the best of their knowledge, has not infringed any rights of any third parties in the use of the Client Content as well as any Trademarks in connection with this Project.

9.2. BY THE CONSULTANT

- a. That the Consultant shall provide all their Services as required by the Client and they shall produce all the Deliverables identified herein in a professional and timely manner;
- b. That the Final Deliverables are the original work of the Consultant; and
- c. That the Consultant, to the best of their abilities, has not infringed in any of the works of any party.

10. INDEMNIFICATION

The parties hereby agree to indemnify and hold harmless the other party from any liabilities, damages, costs, and losses of any claim, demand, or other legal obligations

aside from those that arose from the gross negligence or misconduct of the offending party.

11. TERMS AND CONDITIONS

11.1. This Agreement shall be executed and made effective on the date stated above and shall remain so until the Services as specified herein have been completed and the Final Deliverables and Final Work have been delivered.

11.2. This Agreement shall remain effective for any and all future requests for Services should both parties agree for it to be so.

11.3. Should this Agreement be superseded by a new Agreement executed by both parties, then a new SOW should also be executed.

11.4. This Agreement may be terminated by either party in the event of bankruptcy, the breach of any provisions in the Agreement, or the mutual decision by the parties to do so.

12. PAYMENT

All invoices carry about [SPECIFY NUMBER] ([SPECIFY NUMBER IN NUMERICS]) payment terms. Unless other payment methods have been agreed upon, then the payment for the invoiced Services shall be payable only in check.

14. GENERAL

14.1. NOTICES

Any notice, memo, or official correspondence between the parties must be done so in writing and must bear the signature of the sender to be held effective and official. These must be delivered to the address of the receiver as provided above either personally or via a reputable and registered courier.

14.2. SETTLEMENT OF DISPUTES, GOVERNING LAW & ARBITRATION

- a. Any dispute and/or difference arising out of, or relating to this agreement including interpretation of its terms will be resolved through joint discussion by the authorized representatives of both the parties. Moreover, if the disputes are not resolved by discussion then the matter will be referred for adjudication to the Arbitration of a Sole arbitrator.
- b. This Agreement shall be governed by the laws of India. The Courts in Mumbai (City Name) shall have exclusive jurisdiction over the subject matter of this Agreement.
- c. In the event of any dispute or differences arising out of or in connection with this agreement, the parties hereto, agree to resolve their dispute by a sole arbitrator chosen by the parties in fast track procedure under the provision of Sec29B of Arbitration and Conciliation act of 1996. The award under this section shall be made within a period of 6 months from the date of commencement of the arbitral tribunal proceedings.
- d. The arbitration proceedings shall be conducted in English. The place of Arbitration shall be Mumbai (City Name). The award passed in the arbitration proceedings shall be final and binding on both the parties.
- e. The cost of arbitration proceedings shall be equally borne by both the parties.
- f. Each party shall individually bear the fees of their respective Advocate/Counsel for the proceedings.

14.3. SEVERABILITY

Should any provision in this Agreement be deemed unenforceable or void for any reason whatsoever, then it shall only be the provisions in question that will be scrapped and deemed so. Any other provisions in this Agreement shall continue to be in full force and effect.

14.4. HEADINGS

The headings incorporated into each paragraph of this Agreement are there solely for convenience purposes. They are not to be used in the interpretation of the provisions as set herein nor do they serve as declarations or confirmations of any matter. Note that these headings should not in any way affect the content, meaning, intent, or scope of any provision in the matter.

IN WITNESS WHEREOF, the parties herein set their hands and execute this Agreement on the date as stated above.

[SPECIFY NAME OF CONSULTANT'S REPRESENTATIVE]

CONSULTANT

[SPECIFY NAME OF CLIENT'S REPRESENTATIVE]

CLIENT