

Terms of Agreement

This Agreement ("Agreement") is made and effective as of the date of signing, by and between _____ ("Client") and Redshift Creative, LLC ("Firm").

Firm is in the business of providing custom design and marketing consultation services for a fee.

Client desires to engage Firm to render, and Firm desires to render to Client, certain Marketing and Design Firm services, all as set forth.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained the parties hereto agree as follows:

1. Engagement

Client engages Firm to render, and Firm agrees to render to Client, certain services in connection with Client's planning, creating and preparing of design and/or marketing materials for certain of Client's products as follows:

- A. Analyze Client's current and proposed products and services and present and potential markets.
- B. Create, prepare and submit to Client for its prior approval design and advertising ideas and programs.
- C. Prepare and submit to Client for its prior approval estimates of costs and expenses associated with proposed design and advertising ideas and programs.
- D. Design and prepare, or arrange for the design and preparation of, advertisements and or internet related programming.
- E. Perform such other services as Client may request from time to time such as, but not limited to, direct mail advertising preparation, copywriting, publicity, market research and analysis, web design, programming, media development.
- F. Order printing, advertising space, time or other means to be used for publication of Client's advertisements, at all times endeavoring to secure the most efficient and advantageous rates available.
- G. Audit invoices for space, time, material preparation and charges.

2. Products

Firm's engagement shall relate to the following products and services of Client: [Products]

- Market Consulting and Strategic Planning
- Corporate/Organization Branding and Visioning.
- Graphic Design / Print Layout
- Web Design / Development
- Web Application / Mobile Applications
- Print Management & Delivery (Cost's determined by design and quantity)
- Media Development (Audio and Video)

3. Exclusivity

Firm shall be the Non-Exclusive Marketing Firm in the United States for Client with respect to the products described in Section 2 above.

4. Compensation

- **A. Hourly Rate:** Client shall pay Firm on an hourly basis for services provided hereunder. The rate will be determined by the type of services provided and the person or persons providing such services, but in no event shall the rate exceed [\$105.00] per hour. Client may elect in advance to be charged on this hourly rate basis. If Client fails to notify Firm of its choice, it shall be presumed that Client elected to be charged on an hourly rate basis.
- **B. Project Rate:** In the event that Firm undertakes, at Client's request subject to Client's prior approval, special projects such as those described in Section 1.F above, Firm shall prepare an estimate of total charges for any such special project, including therein any charges for materials or services purchased from outside sources. In the event that Client elects to proceed with the special project based upon Firm's estimated cost, Firm shall perform the services with respect to such special project at its estimated cost, subject to modification as mutually agreed by the parties. This cost estimate is valid only as long as the scope of work remains unchanged from estimate and client follows Firm's protocols regarding project management. Deposits and payments will specifically be outlined in each project cost estimate. Project rate as outlined in estimated proposal will be \$95.00 per hour and billed in 15 minute increments.
- **C. Retainer Rates:** Clients may retain services from Firm for periods of time to include any creative design, programming or consultation services Firm provides. Retainer fees are based on commitment of time and a rate not to exceed [\$70.00] per hour. These fees require a deposit of first and last month of contract amount and payments due every 30 days. Firm reserves the right to cancel retainer contracts and revert to pre-paid hourly basis if client fails to meet retainer services guidelines.

D. Add-Ons: For any add-on, special project or other services provided by Firm pursuant to this Agreement upon which the parties have not agreed as to charges, Client shall pay Firm at its regular hourly rates, not to exceed [\$105.00] per hour.

E. Travel: Client shall not be obligated to reimburse Firm for any travel or other out-of-pocket expenses incurred in the performance of services pursuant to this Agreement unless expressly agreed by Client in advance.

F. Expedite Fees: Clients may on elect to expedite a process, campaign or project. This is available for selected projects and typically effect the overall cost in a range of 10-20% in addition to normal costs. Expedite fees will be reflected in project scope document.

G. Marketing Services & Web Development: Project timeline and budgets are determined per project and agreed upon at the time of contract. All projects will have an estimated timeline but can and often do end up outside of that timeline due to market conditions, project delays and other unforeseen circumstances.

5. Revisions and Change Orders

A. Graphic Design - Client receives two major change request per chosen design. Once approved design is chosen additional changes are billed hourly in 15 minute increments.

B. Firm will clearly articulate in writing areas of changes and Client will sign off on said changes before proceeding.

6. Billing

A. Firm shall invoice Client for all media costs where possible in advance of Firm's payment date to allow for prepayment by the Client so that Client may receive the benefit of any available prepayment or similar discount. For any media purchase or service for which Firm is not entitled to a commission, Firm shall ensure that the charges to Client are net of all Firm commissions and discounts.

B. Charges for production materials and services shall be billed by Firm upon placement of order with vendors. If cash discounts are available, they will be provided upon receipt of the supplier's invoice.

D. All cash discounts on Firm's purchases including, but not limited to, media, art, printing and mechanical work, shall be available to Client, provided that Client meets Firm's requisite billing terms and there is no outstanding indebtedness of Client to Firm at the time of the payment to the supplier.

E. Rate or billing adjustments shall be credited or charged to Client on the next invoice following regular invoice date or as soon as otherwise practical.

F. Invoices shall be submitted in an itemized format and shall be paid by Client within thirty (15) days of the invoice date.

7. Cost Estimates/Change Orders

Firm shall not commence work on any project pursuant to this Agreement without first estimating costs for preparation, including copy, service, layout, art, engraving, typography, processing, paste up, programming and production. After determining the estimated cost, completion of the work shall be subject to Client's prior approval.

8. Audit Rights

Firm agrees that following reasonable prior notice any and all contracts, agreements, correspondence, books, accounts and other information relating to Client's business or this Agreement shall be available for inspection by Client and Client's outside accountants, at Client's expense.

9. Ownership and Use

A. Firm shall insure, to the fullest extent possible under law, that Client shall own any and all right, title and interest in and to, including copyrights, trade secret, patent and other intellectual property rights, with respect to any copy, photograph, advertisement, music, lyrics, software or other work or thing created by Firm or at Firm's direction for Client pursuant to this Agreement and utilized by Client.

All third party software applications including but not limited to, custom database applications, web applications, and content management systems are in the ownership and responsibility of the client. Firm will not offer free or ongoing support for third party software. Firm will offer to client a support mechanism provided through software developers and any costs associated with ongoing software support are the responsibility of the Client.

B. Upon termination, Client agrees that any advertising, merchandising, package, plan or idea prepared by Firm and submitted to Client (whether submitted separately or in conjunction with or as a part of other material) which Client has elected not to utilize, shall remain the property of Firm, unless Client has paid Firm for its services in preparing such item. Client agrees to return to Firm any copy, artwork, plates or other physical

embodiment of such creative work relating to any such idea or plan which may be in Client's possession at termination or expiration of this Agreement.

C. Materials and advertisements created by Firm pursuant to this Agreement may be used by Client outside the United States without additional compensation, provided that Client shall be responsible for any additional expense associated with such use, such as charges for translation and amounts due talent. Firm's obligations in Section 10.A. above shall not apply with respect to any such foreign use.

10. Indemnification and Insurance

A. Firm shall indemnify and hold Client harmless with respect to any claims, loss, suit, liability or judgment suffered by Client, including reasonable attorney's fees and costs, based upon or related to any item prepared by Firm or at Firm's direction, including, but not limited to, any claim of libel, slander, piracy, plagiarism, invasion of privacy, or infringement of copyright or other intellectual property interest, except where any such claim arises out of material supplied by Client and incorporated into any materials or advertisement prepared by Firm. Firm agrees to procure and maintain in force during the term of this Agreement, at Firm's expense, an Firm liability policy or policies having a minimum limit of at least \$100,000.00.

B. Client agrees to indemnify and hold Firm harmless with respect to any claims, loss, liability, damage or judgment suffered by Firm, including reasonable attorney's fees and court costs, which results from the use by Firm of any material furnished by Client or where material created by Firm or at the direction of Firm subject to the indemnification in subsection A. above is materially changed by Client. Information or data obtained by Firm from Client to substantiate claims made in advertising shall be deemed to be "material furnished by Client to Firm".

C. In the event of any proceeding, litigation or suit against Client by any regulatory Firm or in the event of any court action or other proceeding challenging any advertising prepared by Firm, Firm shall assist in the preparation of the defense of such action or proceeding and cooperate with Client and Client's attorneys.

D. In the event of a dispute over terms of this agreement should be challenged by Client, The Client agrees to the method of binding arbitration as a means of settling the dispute.

11. Term

The term of this Agreement shall commence on the day of signature and shall continue in full force and effect until terminated by either party upon at least ninety (120) days prior written notice, provided that in no event (except breach) may this Agreement be terminated prior to Project Completion. The rights, duties and obligations of the parties shall continue in full force during or following the period of the termination notice until termination, including the ordering and billing of advertising in media whose closing dates follow then such period.

12. Rights Upon Termination

A. Upon termination of the Agreement, Firm shall transfer, assign and make available to Client all property and materials in Firm's possession or subject to Firm's control that are the property of Client, subject to payment in full of amounts due pursuant to this Agreement

B. Upon termination, Firm agrees to provide reasonable cooperation in arranging for the transfer or approval of third party's interest in all contracts, agreements and other arrangements with advertising media, suppliers, talent and others not then utilized, and all rights and claims thereto and therein, following appropriate release

from the obligations therein.

C. Early Termination Policy - If client terminates a project prior to the end of the Initial Term or the Renewal Term, whichever is then applicable, (a) Redshift Creative will not refund to you any fees paid in advance of such termination and (b) you shall be required to pay 100% of Redshift Creative's standard monthly charge for each month remaining in the term, unless otherwise expressly provided in this Agreement. Notwithstanding the foregoing, if you terminate your receipt of Shared Hosting Services prior to the end of the first thirty (30) days of the Initial Term, you are entitled to a refund of the fees you paid in advance for the monthly Services, not including any setup fees. Your termination request or notice must be submitted to Firm in the manner described in Section 1.1. firm may terminate this Agreement at any time and for any reason by providing to you written notice thirty (30) days prior to the date of termination. If firm terminates this Agreement, firm will refund to you the pro-rata portion of prepaid fees attributable to Services (excluding setup fees) not yet rendered as of the termination date unless otherwise expressly provided in this Agreement. If termination was enforced due to violations that result in damages or fees assigned to firm on your behalf, no refunds shall apply and you will be held liable for such fees.

Firm can revoke, limit or refuse work with any client who abuses the services or serviceability of Firm staff, contractors

13. Default

In the event of any default of any material obligation by or owed by a party pursuant to this Agreement, then the other party may provide written notice of such default and if such default is not cured within ten (10) days of the written notice, then the non-defaulting party may terminate this Agreement.

14. Notices

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

If To Firm:

Redshift Creative, LLC
130 Inverness Plaza #340
Birmingham, Alabama 35243

15. Headings

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

16. Final Agreement

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties

17. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the state of Alabama.

IN WITNESS WHEREOF, the parties hereto have executed this Advertising Firm Agreement as of the date first above written.

SIGNATURE OF FULL AGREEMENT IS REPRESENTED IN THE PROJECT PROPOSAL DOCUMENT.

_____ Signature of Client

_____ Print Name

_____ Date