



INSERT
PROD CO.
LOGO

AICP STATEMENT OF WORK (SOW)

Production Company Producer:

Production Company:

Production Company Address:

Agency Producer:

Advertising Agency:

Agency Address:

Advertiser:

Brand:

Advertiser Representative:

Advertiser Address:

Project Name:

Project Number:

This Statement of Work (“SOW”) is entered into effective as of [**Month, Day, Year**] (the “Effective Date”) by and between [**Production Company**] (“Producer”), and [**Agency or Advertiser**] (“Client”), collectively, the (“Parties”). This SOW will define work on the specific project described herein (the “Project”) to be conducted by Producer, deliverables and deadlines for both Producer and Client, and terms for the project relationship. The Parties expressly acknowledge and agree that this SOW is governed by the attached Standard Terms and Conditions and that the interpretation of this SOW is subject to those Standard Terms and Conditions. Any defined terms in this SOW that are not defined herein shall have the meaning ascribed to them in the Standard Terms and Conditions. This SOW together with the Standard Terms and Conditions constitutes the entire agreement between the Parties. All previous written or oral undertakings and promises relating to this Project shall be superseded by the content of this SOW. In the event of a conflict between this Statement of Work and any other proposals, terms, conditions or agreements, the terms within this document shall govern.

1. Producer’s Project Role

Producer is to function as a creative development and production company for Client.

2. Description of Services

- A. Under this Statement of Work, Producer shall provide Client with the following services (the “Services”):
[Amend, as needed]

1. Information Architecture
2. Art Direction/Design or Creating Finished Artwork from Client-Supplied Files
3. Front-end Development
4. Back-end Development
5. Deployment
6. Technical Direction
7. Creative Direction
8. Production Management
9. Sound Design
10. Music i.e.: 1 year Worldwide rights
11. Moderation
12. Quality Assurance Testing/Optimization
13. Tracking
14. Bug fixes (30 days post-launch)
15. E&O Insurance (see “Standard Terms and Conditions”)

***For Film and post component, see breakdown in Appendix [X.X]*

- B. The following are not included as Services within this SOW:
[Amend, as needed]

1. Information Architecture
2. Art Direction/Design; Supplying Finished Artwork to Producer
3. Stock Video/Photo Sourcing + Purchasing
4. Back-end Development
5. Deployment
6. Hosting
7. Sound Design
8. Music
9. Moderation (Site, Social Networks, UGC Component)
10. Maintenance
11. Prize Fulfillment
12. Agency/Client Travel, including hotel, per diem, mobile phones, and ground transportation
13. E&O Insurance (see “Standard Terms and Conditions”)

3. Project Assignment

Producer’s Services as described herein shall be narrowly focused on the following activities and deliverables:

A. Project Description

[Insert Project Summary with a broad overview of deliverables (top-level only)]

4. Project Scope with Listed Deliverables

The following elements are considered in scope. Assumptions and dependencies are noted where applicable.

[Amend, as needed]

A. Producer Deliverables

Producer will create and present the following deliverables within this SOW (“Deliverables”):

Project Management

1. Project Schedule

Creative Definition

2. Research + Development (if applicable) [*Describe Prototype; describe if Producer is using an existing Prototype or building an original for Client on this job*]
3. Information Architecture [*Describe if Desktop and Mobile Wires; 1 x Review with Agency*]
4. Designs [*Describe what; Animations; 3D, etc.; 2 x Reviews with Agency*
 - a. Mobile/Tablet: version of desktop experience or alternate experience [*Describe how it might be different or versioned*]
5. Copywriting (if applicable)

Production + Deployment

6. Development [*Describe if Front-end + Back-end; Programming Language; Integration with existing or Client-supplied API; Desktop + Mobile (version of desktop experience or alternate experience); App; etc.; Alpha and Beta Reviews with Agency*]
7. Deployment [*Client IT or Client Partner; or Production Company; iOS/Browser-Compatibility; Front-end/Back-end Recommendation Load Balancing, etc.*]
8. Sound Design / Music [*Working with Client-supplied Partner to Develop or handover; Production Company responsible for Sound Design + Music or just a component, etc.*]

9. Analytics [*SEO Plan, Integration with GA/GA SDK/Client-Provided Tracking*]
10. Quality Assurance [*How many days; will this be a combined Client/Production company effort; outsourced, etc.*]
11. Source File Handover (See “Standard Terms and Conditions” for definition of Source Files)
12. Bug Fixes (30 Days post-Launch only) [*Describe what tracking software you’re using and if you’re also tracking within a Client’s Bug Tracking software*]

B. Technical Considerations

[*Amend, as needed*]

1. Supported Desktop Platforms
 - a. Mac OSX 10.6 and above
 - b. Windows XP + Windows 7+8
2. Supported Desktop Browsers
 - a. Mac: Firefox 4 and above
 - b. Mac: Chrome 21 and above
 - c. Mac: Safari 5 and above
 - d. Windows: IE 8 and above
 - e. Windows: Firefox 4 and above
 - f. Windows: Chrome 21 and above
3. Supported Flash Player
 - a. Adobe Flash 10.1 and above
4. Resolution/Browser Window Viewport
 - a. 1024x768 (or above)
5. Supported hardware
 - a. Minimum CPU (PC): Intel Pentium 4 or AMD Athlon 64 processor
 - b. Minimum CPU (Mac): Multicore Intel processor
 - c. Minimum 4GB of RAM
6. Supported Mobile + Tablet devices
 - a. iPhone 4S and above
 - b. iPad 3 and above
 - c. Android Phones [*List all that are relevant*]
 - d. Android Tablets [*List all that are relevant*]
 - e. Graceful degradation for: [*List devices*]

7. Supported Mobile OS
 - a. iOS 5 and 6
 - b. Android [X.X] and above
8. Supported Mobile Browsers
 - a. iOS Devices: Native (Safari) and Chrome
 - b. Android Devices: Native (Android or Chrome depending on Android OS)

9. Hosting Requirements

The recommendation is to have the following setup:
[Describe Front-end and Back-end solution]

10. API Integration

This site/experience will integrate with the [X] API.
[Add any pertinent information regarding the API]

11. Connection Speed [*Site-Dependent*]

The site will be optimized for users at 10 MBPS and up

12. Load Time [*Site-Dependent*]

Performance will be a top priority. The initial load time of the site will be kept to a minimum, taking into consideration that load time will be longer for people with low bandwidth (below 10 MBPS) or those behind a Proxy or VPN Connection.

C. Client Deliverables + Responsibilities (the “Client Deliverables”)

[Amend, as needed]

Client will deliver the following items to Producer:

1. Final Copydeck + Script (if applicable)
2. Brand Guidelines, Logos (as EPS file)
3. Font Purchasing and Licensing (delivery to Producer as TrueType web font, if required)
4. Brand Imagery
5. Licensing + Legal Clearances, including Patent Liability
6. Creative + Art Direction
7. Information Architecture
8. Technical Specs + Requirements [For Site; Banners; App, etc.]
9. Media Plan
10. URL Registration + Purchase; SSL Certificate (if required)
11. Hosting
12. Access to a Sandbox Testing Environment
13. Access to API for Integration

14. Analytics Code for Implementation
15. SEO Plan
16. Sound Design / Pre-Existing Music
17. Agency/Client Travel, Accommodations, Per Diem, Mobiles, etc.
18. E&O Insurance

5. Assumptions

[Amend, as needed]

The schedules and estimates outlined within this SOW are based on the following assumptions and assertions that are a part of the collaborative relationship between the Parties and may directly affect the Project Schedule and/or Budget: [Describe all assumptions that affect all Client Deliveries to Producer, as well as any aspect of Production]

- A. All creative elements (Design, Copy, Developments, etc.) shall be limited to two (2) rounds of iterations for the selected choice, provided Producer has fully granted the appropriate rights and usage as outlined herein.
- B. Client will submit feedback and/or approvals within the allocated timeframe (or a maximum of 48 hours) to reduce the number of changes to scope, schedule, and/or cost.
- C. Client will set up and deliver necessary account permissions [*Define if for: Facebook, Instagram, Twitter, etc.*] to Producer at the time of Development Kick-off.
- D. Client will set up and deliver necessary tracking credentials to Producer two weeks prior to Beta delivery. Producer will integrate any tracking techniques and Client-provided code into its Deliverables.

6. Project Timeline

Producer will commence the Services under this SOW not before the document signature date and will complete the Services and deliver the Deliverables to Client in preparation for each of the estimated delivery dates specified herein with all work being completed by a target final delivery date of [*Month, Day, Year*].

Key project milestones:

Award Production: [*Month, Day, Year, Time (if required)*]

Full Production Kickoff: [*Month, Day, Year, Time (if required)*]

Deploy (if different from Launch) **or Launch** [*Site/banners/mobile site, etc.*]:
[*Month, Day, Year, Time (if required)*]

For a list of all schedule dates, please see Appendix [X.X]

Workdays are based on [X] hour days (consisting of [X] hours of straight time and [X] hours of overtime) and are [*exclusive or non-exclusive*] of weekends and holidays.

Missed milestones by Client or Client's third party will correspond in pushed dates for the remaining milestones.

No final delivery dates or major milestones will be altered without the mutual written agreement between the parties.

7. License Grant

[*Amend, as needed*]

A. Term: [X]

Term Expiration: [*Month, Day, Year*]

B. Territory: [X]

Additional exploitation shall be subject to a separate agreement negotiated by the Parties.

8. Portfolio Rights/Publicity

Producer shall be credited as:

Once the Project has launched, Producer may refer to Client as a client of Producer and exhibit or publicize the results of the Services in the following manner:

[*Expand on all that apply*]

A. Producer's website:

B. Producer's social networks:

C. Producer's marketing materials and presentations:

D. General press releases:

E. Award show submissions:

F. Producer shall not have the right to publicize the Services in any form:

* *Client to supply PR contact for this project, upon award.*

9. Project Fees, Payments and Process

A. Budget

Please see Appendix [X.X]

The Parties agree that, based upon the specific scope set forth herein, the fixed fee for Services by Producer for all work detailed within this SOW are:
\$ [XXX,XXX] USD.

B. Fee Schedule

Producer shall be paid as follows:

50% due upon contract signature, but not later than 10 days after award of the Project:
\$ [XXX,XXX] USD.

25% progress payment due on
[Month, Day, Year]: \$ [XXX,XXX] USD.

25% due upon delivery
[Month, Day, Year]: \$ [XXX,XXX] USD.

If payment is not received in accordance with the payment schedule the Producer shall be entitled to cease work on the Project and/or withhold final Deliverables until such payment is received. Under no circumstances shall Producer be required to deliver Project without having received seventy-five percent of the Budget.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be signed as of the Effective Date.

[CLIENT]

By: _____
Name: _____
Title: _____
Date: _____

[PRODUCER]

By: _____
Name: _____
Title: _____
Date: _____

AICP STANDARD TERMS AND CONDITIONS

INTERACTIVE DEVELOPMENT STATEMENT OF WORK

1. Standard Terms and Conditions. These Standard Terms and Conditions control the Statement of Work attached hereto between Client and Producer and govern the website and multimedia development services set forth in the Statement of Work (the “**Services**”) in connection with the work designated in the Statement of Work (the “**Work**”). Any capitalized terms in these Standard Terms and Conditions which are not defined herein shall have the definitions set forth in the Statement of Work. The Statement of Work, these Standard Terms and Conditions and any riders attached to and incorporated into the Statement of Work shall be collectively referred to as the “**Agreement**”.

2. Provision of Services. Producer agrees to provide the Services set forth in the Statement of Work. When the Services are completed, the finished work product shall be deemed a “**Project**”.

3. Responsibilities of Client. Client and Producer hereby agree that the Services will not commence until the Statement of Work has been executed by both parties. Client shall provide Producer with access to Client’s technical personnel, facilities, databases, and information as necessary for Producer to perform its obligations under the Agreement. Client also agrees to perform those tasks, deliver certain materials and assume those responsibilities specified in the applicable Statement of Work (“**Client Deliverables**”). Client understands that Producer’s performance is dependent on Client’s timely and effective satisfaction of Client Deliverables and timely decisions and approvals by Client’s client (if any). Unless otherwise agreed in writing by the parties, Client shall have sole responsibility for acquiring and maintaining its own technology environment, including but not limited to PC’s, operating systems, databases, servers, Internet access, networks and hosting. It is expressly understood and agreed by the parties that Producer may cease work without penalty in the event that Client fails to pay the initial fee due for the work as set forth in the Statement of Work.

4. Intellectual Property Rights.

(a) Producer’s Rights. In the course of performing the Services, Producer will utilize certain proprietary platforms, software, code, algorithms, and framework (the “**Producer Platform**”) previously developed by or on behalf of Producer as well as custom software, documentation or other materials specific to the Project listed in the Statement of Work (“**Work Product**”). Client acknowledges and agrees that Producer will retain sole ownership of all intellectual property rights in the Producer Platform and Work Product, and that such Producer Platform and Work Product shall be deemed licensed to Client under the terms of the software license in Section 4(c) below unless otherwise mutually agreed in writing in the applicable Statement of Work. Client further acknowledges and agrees that Client will have no ownership or other interests in any of the preliminary work product of Producer.

(b) Client's Rights Limited to Object Code. Notwithstanding anything herein to the contrary, Client acknowledges and agrees that any and all of its right, title or interest in and to the Work Product hereunder extends to such Work Product as a whole in object form, and not to its component parts (including without limitation, images, code, three-dimensional models, and other individual elements, whether in source or object code form). To the extent that such concepts apply to the programming language used in preparation of the Work Product, all programming source code and all modifications made thereto during the term hereof (“**Source Code**”) and design files, 3d modeling files, animation files and other component parts of the deliverables other than Source Code (“**Other Source Materials**”) shall be owned by and remain the property of Producer (the Source Code and Other Source Materials collectively, “**Source IP**”).

(c) Software License; Other Source Materials License. Effective upon payment in full of all amounts due under this Agreement, Producer hereby grants to Client a royalty-free, non-exclusive right and license (the “**Software License**”) to use the Producer Platform and final Work Product for the period of time and in the territories and media set forth in the Statement of Work and solely in connection with the distribution and use of the Project as further defined in the Statement of Work. Client agrees not to distribute, reverse engineer or otherwise make available the functionality of the Producer Platform or Work Product or any derivative products of the Producer Platform or Work Product to any third party. Upon receipt of all fees due to Producer under the Statement of Work, Producer shall also grant Client a non-exclusive license to the Other Source Materials for the purpose of using the Work Product during the Term set forth in the Statement of Work. The licenses granted herein shall be referred to in the Statement of Work as the “**License Grant**”.

(d) Client's Option to Request Source IP Escrow. Upon the written request of the Client, Producer shall deliver a complete copy of the Source IP to an escrow agent of Producer’s choice to hold in escrow for a period of two (2) years from the completion of the Services. The fees for the Escrow Agent shall be paid by the Client. The terms of the escrow arrangement shall be governed by an Escrow Agreement to be entered into among Producer, Client and the Escrow Agent. Upon the completion of the two year period, the Source IP shall be returned to Producer. If, for any reason during the escrow arrangement, Producer ceases to do business as a going concern due to undischarged bankruptcy or liquidation (other than liquidation in connection with a merger, acquisition of assets, restructuring or similar corporate event), Client shall be entitled to receive a copy of Source IP relating to the applicable Statements of Work, whereupon Client will be free to use the Source IP for changes, updates and enhancements to the Work Product only, but subject to the Software License.

(e) Rights in Characters. Notwithstanding the foregoing, use of any character created by Producer and contained in the Project will not be free of the foregoing restrictions in this Section 4. Use of such character in additional projects or campaigns will be subject to a separate agreement and fee, to be negotiated by Client and Producer.

(f) Client's Rights; License to Producer. Producer agrees that Client shall retain ownership of all Client Deliverables and data. Client hereby grants Producer a non-exclusive, royalty-free license to use the Client Deliverables solely for the purpose of

providing the Services. Notwithstanding anything else to the contrary in these Standard Terms and Conditions, unless otherwise set forth in the Statement of Work, Producer also agrees that Client shall retain ownership of all right, title and interest in and to any and all data collected from end users of Producer's work product, including without limitation email addresses, IP addresses, and demographic information.

5. Budgeting; Adjustments. Producer shall issue the Statement of Work describing the details of the Services and the Deliverables to Client prior to commencing the Services. The "**Contract Price**" defined and set forth in the Statement of Work shall incorporate the cost of the Services as outlined in the Statement of Work. The Contract Price shall be considered a "firm bid" (as that term is commonly used), but Client may request reasonable additions to or alterations of the Work or to any material or work in progress while Producer is providing the Services, with the express understanding that the scope of the work described in a Statement of Work may not be reduced after Client's acceptance of Producer's firm bid. Client may request changes to the Services at any time. Changes must be requested in writing and with sufficient detail to enable Producer to assess the impact of the requested change on the cost, timing and/or any other aspect of the Services. Immaterial changes shall be implemented by Producer at no additional cost to Client and without the need for any amendment to the SOW. In the event that Producer reasonably believes in good faith that any requested change involves or requires a material deviation from the SOW (a "**Material Change**"), Producer shall provide Client with written notice to that effect within five (5) business days of receipt of the change request setting forth Producer's good faith estimate as to the additional costs and/or time, if any, necessary to implement such requested Material Change. Any requested Material Changes must be agreed to in a writing signed by both parties. Unless such a change is agreed to in writing (including a change with respect to which written notice has been given by the Producer that it reasonably believes in good faith such a change is Material), the last-agreed terms will apply and Producer will be under no obligation to make the requested Material Change. A change which by itself might be deemed immaterial may be considered a Material Change by Producer if taken together with other immaterial changes Producer reasonably believes in good faith that there is a material impact on the cost, timing and/or any other aspect of the Services. Client shall be responsible for all additional costs incurred under this Section 5, and such additional costs shall be paid to Producer at the time the final payment of the Contract Price is due, or at such other time agreed to between the parties in writing.

6. Bug Fixes; Compatibility. Producer shall be responsible for making any bug fixes which are identified within thirty (30) days following the delivery of the Project to Client or Client's client (if any). For the purposes of this Agreement, a "bug" is an error or flaw in the Source Code which prevents the Project from operating as specified. Producer shall use its commercially reasonable efforts to ensure that the Project is compatible with current API specifications for third party interfaces where appropriate and specified by Client, but shall not be responsible for any compatibility issues arising as a result of API specification revisions occurring after the producer has commenced work on the Project and any requested modifications resulting from such API specification revisions will constitute a Material Change.

7. **Delivery; Acceptance.** Upon the delivery to Client of (i) any Work representing the completion of any milestone described in the SOW and/or (ii) the final deliverables and any other Work, Client shall have thirty (30) days from the receipt of the Work or deliverable to review for material deviations from the SOW. If no objections have been raised within such thirty day period, the Work under review shall be deemed accepted. In the event that Client raises any objections, in writing to Producer, Producer will review such objections and shall have ten (10) business days from the receipt of Client's notice to bring the deviation(s) described in such notice into material compliance with the SOW, or to explain in writing to Client why there is no deviation. Upon correction of the deviation(s), Client shall then proceed to re-test and reevaluate the Work. Client's failure to raise any new objection(s) within five (5) business days after receipt of the revised Work shall be deemed Client's acceptance of such revised Work. Any failure by Producer to correct a material deviation shall be deemed a material breach of this Agreement, entitling Client to any and all available remedies at law and or equity, that are allocated by a court of final resort to such deviation. It is expressly understood and agreed by the parties that any deviation from an SOW that is the result of third party action (e.g., a change in a third party API that affects the function of Work) shall not be considered a material deviation.

8. **Maintenance Services.** In the event that Client may wish to retain Producer to provide services relating to the maintenance of the Project after delivery, the provision of such services shall be subject to a separate agreement and fee, to be negotiated by Client and Producer.

9. **Payment Terms.** Client shall make all payment(s) due to Producer under this Agreement on time and in full and in accordance with the Statement of Work. Client acknowledges and agrees that it has no right to exploit the Work in any manner until Producer has been paid in full. Client shall be responsible for the costs, including reasonable attorney's fees, incurred in connection with Producer's collection of any past-due amounts under this Agreement; in the event that Producer must resort to a collection process for delinquent payment, Client shall pay to Producer a penalty in an amount equal to the then-current prime rate plus two percent (2%) (as indicated by Producer's bank at the applicable time) on unpaid amounts until paid, compounded monthly from the date on which the payment was due. It is expressly understood and agreed by the parties that title and/or a complete license grant to the Producer Platform and Work Product, as is appropriate, shall not pass to Client until all payments due have been made to Producer. All payments shall be made in U.S. Dollars. In the event Client fails to fulfill its obligations under the Agreement in a timely manner, including without limitation timely payment of invoices, Producer may suspend Services and invoice Client for the total fees incurred up to the date of suspension, along with its costs of collection, including without limitation reasonable attorneys' fees. Client shall be responsible for any and all applicable taxes, however designated, incurred as a result of or otherwise in connection with this Agreement, including but not limited to state and local privilege, excise, sales, and use taxes and any taxes or amounts in lieu thereof paid or payable by Producer, but excluding taxes based upon the net income of Producer.

10. **Cancellation and Postponement.** If Producer blocks out a specific period of time to render the Services, then Producer will not have to make any further efforts to mitigate any damage caused from Client's Postponement or Cancellation. For the purposes of this Agreement, "**Postponement**" is defined as a rescheduling of the Services in a particular Statement of Work to a later specific date caused or directed by Client and "**Cancellation**" is defined as a total cancellation of the Services in a particular Statement of Work. Producer shall be permitted to issue a notice of Cancellation of the Services in a particular Statement of Work in the event that Client requests a Postponement that is not permitted by Producer's schedule. In such event, Producer's decision regarding its schedule availability shall be made at Producer's sole discretion for any reason. A Postponement request that is accepted by Producer shall be treated in accordance with the change order provisions of this Agreement, however payment for such postponement change order shall be made prior to the delivery of the Project. If Client and Producer cannot agree on the postponement fees, Client shall have the option to cancel the Services, subject to the Cancellation Fees (as defined below), or withdraw its request for Postponement. Upon Cancellation, Client shall promptly pay the Cancellation Fees, as set forth below. Cancellation shall result in cancellation fees (the "**Cancellation Fees**") as follows:

(a) If notice of Cancellation is given halfway or later through the production schedule of the job, that is between the award or start date and the final delivery date, the Client will be liable to the Producer for the full cost of the job as bid plus all change orders negotiated prior to the notice of Cancellation.

(b) If notice of Cancellation is given in the second quarter of the production schedule of the job, that is between the award or start date and the final delivery date, the Client will be liable to the Producer for seventy-five percent (75%) of the job as bid plus all change orders negotiated prior to the notice of Cancellation.

(c) If notice of Cancellation is given in the first quarter of the production schedule of the job, that is between the award or start date and the final delivery date, the Client will be liable to the Producer for fifty percent (50%) of the cost of the job as bid plus all change orders negotiated prior to the notice of Cancellation.

(d) If scheduled production has been prevented from occurring due to circumstances beyond the control of Producer as in "force majeure" (meaning but not limited to, earthquake, riot, flood, volcanic eruption, acts of war, strikes, labor unrests, civil authority, terrorism, power outages, and acts of God) the Producer shall be paid for Cancellation in accordance with the terms above.

11. **Marketing.** Each party shall identify and give proper credit to the other party in connection with marketing, promotion and other related uses of the Project. Producer shall have the right to market or promote the Project only as set forth in the Statement of Work.

12. Communications. Each party shall designate one person to be its authorized representative. All communications regarding schedule, budget, design, change orders or other material matters should be communicated by or to such designated representative. E-mail communications that have been replied to shall be deemed to have been delivered in writing for purposes of this Agreement.

13. Confidentiality. The parties hereto acknowledge that they may receive from the other information of a confidential and/or sensitive nature, including, without limitation, processes, technologies and methods, any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) (“**Confidential Information**”), in the process of producing the Work. Confidential Information of Producer includes, but is not limited to, the terms of this Agreement; Producer software, as well as the structure, organization, documentation, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated with such software; and Producer’s pricing, sales and training materials and procedures. The parties will use commercially reasonable efforts to keep confidential all of the other’s Confidential Information. Each party shall, at the other’s reasonable written request (except Producer shall be deemed to have made such request with respect to any cost consultant of Client or Client’s client), require independent contractors engaged by such party in connection with the production of the Work to sign appropriate agreements to keep confidential any Confidential Information; provided, however, that such party and its contractors and/or employees may disclose such Confidential Information as may be necessary for such party to perform its duties under this Agreement. In the case of a cost consultant engaged by the Client or Client’s client such agreements shall include, but shall not be limited to, an express prohibition of the use by the cost consultant of Confidential Information in any form or for any client other than the Client or Client’s client. Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; (c) was previously known by the receiving party as shown by its written records; or (d) was independently developed by the receiving party as shown by its written records. Notwithstanding the foregoing, a receiving party may disclose Confidential Information of the disclosing party as required by law or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure. Each party acknowledges and agrees that any violation of this Section 13 or the intellectual property rights of Producer may cause the disclosing party irreparable injury for which the disclosing party would have no adequate remedy at law, and that the disclosing party shall be entitled to preliminary and other injunctive relief against the receiving party for any such violation. Such injunctive relief shall be in addition to, and in no way in limitation of, all other remedies or rights that disclosing party shall have at law or in equity. Upon the termination or expiration of this Agreement and upon written request of the disclosing party, the receiving party will return to the disclosing party all the Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party, or if unable to return such Confidential Information, will destroy such Confidential Information and attest in writing to its destruction, with the exception of Confidential Information which must be legally retained for Federal, State or Local tax records, collective bargaining agreement

compliance, Federal and State payroll compliance, standard accounting, legal, and operational business practice documentation. The provisions of this Section 13 shall survive any termination of this Agreement.

14. Termination.

(a) By Either Party. Either party may, upon giving the other party at least ten (10) days written notice identifying specifically the basis for such notice, terminate this Agreement or a Statement of Work for material breach, provided that the breaching party shall not have cured such breach within the ten (10) day period. Upon termination of this Agreement for any reason, Client shall pay Producer for all services and expenses previously expended or delivered by Producer prior to such termination.

(b) Good Faith Attempts to Resolve Disputes. The parties agree to work together in good faith to resolve any dispute regarding this Agreement internally and by escalating it to higher levels of management prior to resorting to litigation.

15. Relationship of the Parties. It is understood that Producer's status under this Agreement is that of an independent contractor and that all persons engaged by Producer in performing its obligations shall not be deemed employees of Client. Producer shall make whatever payments may be due such persons and will comply with all governmental regulations. Nothing contained herein shall constitute a partnership between or by the parties hereto or constitute either party the agent of the other. Neither party shall hold itself contrary to the terms of this Section 15 and neither party shall become liable for any representation, act or omission of the other contrary to the provision hereof.

16. Warranties; Limitation of Liability.

(a) Of Producer. Producer represents and warrants as follows: (i) Producer has full right to enter into this Agreement and to perform its obligations hereunder; (ii) Producer will comply with all applicable Federal, state and local laws, ordinances and regulations and with all applicable union agreements to which Producer is a signatory; (iii) Producer's Services will be performed in a professional and workmanlike manner in accordance with the applicable Statement of Work. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PRODUCER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING AS A RESULT OF CLIENT USAGE IN THE TRADE OR BY COURSE OF DEALING.

(b) Of Client. Client represents and warrants as follows: (i) Client has full right to enter into this Agreement and to perform its obligations hereunder; (ii) Client hereby represents and warrants that it is the owner of all right, title and interest, including without limitation copyright and trademark rights, in and to any and all Client Deliverables, and that Producer's use of any and all of the Client Deliverables in connection with its obligations pursuant to this Agreement shall not constitute a violation of any rights of any third party; (iv) Client will comply with all applicable Federal, state and local laws and regulations regarding substantiation of claims, comparative advertising and trade practices; and (v) Client is not prohibited or otherwise prevented from entering

into and performing this Agreement by any other contracts, agreements or other understandings with any third party or parties.

(c) Limitation of Liability. All liability arising under this Agreement, whether under theory of contract, tort (including negligence), or otherwise, shall be limited to direct damages. Neither party nor their suppliers shall have any liability to the other party or to any third party, for any incidental, punitive, indirect, special or consequential damages, including but not limited to lost profits, loss of data, cost of recreating lost data, interruption of business, or costs of procurement of substitute goods or services, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. The aggregate liability of Producer and its suppliers under this Agreement shall not exceed the total Fees paid by Client to Producer hereunder with respect to the Statement of Work. Any action by either party must be brought within one (1) year after the cause of action arose.

17. Insurance.

(a) Worker's Compensation Insurance. Producer shall maintain in effect during the term worker's compensation insurance with statutory limits;

(b) Employer's Liability Insurance. Producer shall maintain in effect during the term employer's liability insurance with a limit not less than \$1,000,000.

(c) Professional Errors and Omissions Liability Insurance. The parties agree that either Producer or Client, as set forth in the Statement of Work, shall maintain in effect during the term professional errors and omissions liability insurance providing coverage with respect of liability for libel, slander, privacy, and copyright infringement of not less than \$1,000,000 (USD) per wrongful act and aggregate.

18. Indemnification.

(a) By Producer. Except as to matters covered under Client's indemnification obligations hereunder, Producer shall at all times indemnify and hold Client and its successors, assigns, licensees and distributors and their respective shareholders, directors, officers, employees and agents harmless from and against any and all third party claims, demands, damages, losses, actions, causes of action, liabilities, costs and expenses, including reasonable outside attorneys' fees (collectively, "**Losses and Expenses**") (i) arising out of any breach by Producer of any representation, warranty, covenant or other provision hereof made by Producer, and/or (ii) asserted by or on behalf of any person or entity by reason of any breach of contract or tort committed by Producer, including, without limitation, Producer's malfeasance and/or gross negligence and/or intentionally tortious acts committed by Producer (but excluding any claims for patent infringement). Client shall promptly notify Producer in writing of each such claim.

(b) By Client. Except as to matters covered under Producer's indemnification obligations hereunder, Client shall at all times indemnify and hold harmless Producer and its successors, assigns, licensees and distributors and their respective shareholders, directors, officers, employees and agents, from and against any and all Losses and Expenses (including reasonable outside attorneys' fees and costs): (i) arising out of the exploitation of the Work and/or the sale, marketing, consumption and/or use of any

product or service featured in the Work; (ii) arising out of any breach by Client of any representation, warranty, covenant or other provision hereof made by Client (including without limitation, the obligation to make payments in a timely manner hereunder), (iii) arising out of the use of the Client Deliverables by Producer; or (iv) asserted by or on behalf of any person or entity by reason of any breach of contract or tort committed by Client, including, without limitation, Client's malfeasance and/or gross negligence and/or intentionally tortious acts committed by Client. Producer shall promptly notify Client in writing of any such claim.

19. Applicable Law. This Agreement shall be interpreted and governed by the local laws of the state where Producer is located as set forth in the Statement of Work. In the event of any dispute arising out of this Agreement, each of the parties hereto irrevocably agrees that the state and federal courts located in city or county of Producer's primary location shall have exclusive jurisdiction over any suit or other proceeding arising out of or based upon this Agreement, and each hereby waives any claim that it is not subject personally to the jurisdiction of said courts or that any such suit or other proceeding is brought in an inconvenient forum or improper venue.

20. Continuing Offer of Services. Neither Producer nor Client shall be precluded from retaining or providing to third parties the same or similar services which are the subject of the Agreement or Statement of Work; provided, however, that neither party shall use any Confidential Information or intellectual property of the other party in providing services to or receiving services from third parties.

21. Entire Agreement; Modification. This Standard Terms and Conditions, the Statement of Work, and any Riders and/or Exhibits attached hereto shall constitute the entire agreement between Producer and Client with respect to the Work and supersede all prior or contemporaneous written and oral agreements with respect to its subject matter. Any amendment hereto must be in writing and signed by each party. No waiver of any provision of this Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving compliance. In the event that any provision herein is determined to be invalid or otherwise unenforceable or illegal, this Agreement shall otherwise remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable or illegal provision were not contained herein.

22. Headings. Headings used in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

23. Notices. Each party shall designate one party to be its authorized representative. All communications regarding schedule, budget, design, change orders or other material matters should be communicated by or to such designated representative. All notices required or permitted hereunder shall be in writing, delivered personally or by telephonic facsimile, certified or registered mail, or overnight delivery by an established national delivery service at the respective addresses first set forth in the Statement of Work. E-mail communications that have been replied to shall be deemed to have been delivered in writing for purposes of this Agreement.