

# **RETAINER SERVICES AGREEMENT**

This Retainer Services Agreement ("Agreement") is entered into as of January 13, 2025, by and between Practical Prompting LLC. ("Consultant"), whose principal place of business is located at 13200 Pacific Promenade, #118, Playa Vista, CA 90094, and Tracker Products, LLC. ("Client"), whose principal place of business is located at 10554 Mountain Laurel Way, Union, KY 41091.

## **1. ENGAGEMENT AND SERVICES**

### **1.1 Engagement**

Client hereby engages Consultant, and Consultant hereby accepts such engagement, to provide the services described in this Agreement on the terms and conditions set forth herein.

### **1.2 Services**

Consultant shall provide marketing, strategic, and content development services to Client on a retainer basis ("Services"). Examples of potential services are outlined in Exhibit A attached hereto. The specific services to be performed shall be determined collectively on a case-by-case basis and implemented as needed. Exhibit A is provided for illustrative purposes only and does not constitute a commitment to complete all listed items.

### **1.3 Hour Limitation**

Consultant shall provide up to twenty (20) hours of Services per week. Hours shall be tracked by Consultant and reported to Client on a bi-weekly basis.

### **1.4 Additional Hours**

Any Services performed in excess of twenty (20) hours per week shall be billed at a rate of \$125 per hour ("Additional Hours"). Consultant shall notify Client when approaching the weekly hour limit and shall obtain Client's written approval before performing any Additional Hours.

## **2. TERM AND TERMINATION**

### **2.1 Term**

This Agreement shall commence on the Effective Date and shall continue through December 31, 2025, subject to Section 2.2 and Section 2.3 below.

## **2.2 Minimum Commitment**

Client agrees to a minimum commitment period of three (3) months from the Effective Date ("Minimum Commitment Period"). During the Minimum Commitment Period, this Agreement may not be terminated except for material breach as set forth in Section 2.4.

## **2.3 Termination After Minimum Commitment**

Following the Minimum Commitment Period, either party may terminate this Agreement for any reason upon thirty (30) days' written notice to the other party.

## **2.4 Termination for Cause**

Either party may terminate this Agreement immediately upon written notice if the other party materially breaches this Agreement and fails to cure such breach within fifteen (15) days after receiving written notice thereof.

## **2.5 Effect of Termination**

Upon termination of this Agreement: (a) Client shall pay Consultant for all Services performed up to the effective date of termination; (b) If Client has prepaid for Services not yet rendered, Consultant shall refund such amounts to Client within fifteen (15) days of termination; (c) Sections 5, 6, 7, 8, and 10 shall survive termination of this Agreement.

# **3. COMPENSATION AND PAYMENT**

## **3.1 Retainer Fee**

Client shall pay Consultant a retainer fee of \$5,000 bi-weekly (\$2,500 per week) for the Services ("Retainer Fee").

## **3.2 Initial Payment and Transition**

- a) This Agreement shall be deemed to have commenced on January 13, 2025, the same date as the original agreement.
- b) The initial payment of \$14,051.40 made by Client under the original agreement dated January 13, 2025 shall be applied as payment for services under this Agreement for the period from January 13, 2025, through February 21, 2025 (39 days).
- c) This amount represents approximately 5 weeks and 4 days of service at the rate of \$2,500 per week (\$13,928.57), with the remaining balance (\$122.83) to be credited toward the next payment due.

d) The next bi-weekly payment shall be due on February 22, 2025, for the period of February 22, 2025, through March 7, 2025.

### **3.3 Ongoing Payments**

After the initial payment, Client shall pay the Retainer Fee every two weeks in advance, with payments due on Client's typical payroll day. Client shall inform Consultant of their standard payroll schedule upon execution of this Agreement.

### **3.4 Additional Hours**

Consultant shall invoice Client for any approved Additional Hours at the end of each bi-weekly period. Payment for Additional Hours shall be due within fifteen (15) days of invoice receipt.

### **3.5 Expenses**

Client shall reimburse Consultant for reasonable out-of-pocket expenses incurred in connection with the Services, provided that: (a) Expenses exceeding \$250 individually or \$500 in aggregate per month require prior written approval from Client; (b) Consultant shall provide documentation for all expenses; and (c) Expenses shall be invoiced monthly and payable within fifteen (15) days of invoice receipt.

### **3.6 Late Payments**

Any payment not received within fifteen (15) days of the due date shall bear interest at the rate of 3% per month or the maximum rate permitted by law, whichever is less, from the due date until paid.

### **3.7 Suspension of Services**

Consultant may suspend performance of Services if any payment is more than fifteen (15) days past due. Consultant shall resume performance upon Client's payment of all past due amounts, including applicable interest.

## **4. CHANGE REQUEST PROCESS**

### **4.1 Scope Changes**

Any significant changes to the scope of Services shall be subject to the following change request process:

(a) **Submission:** The party requesting a change shall submit a written change request describing the proposed change, the reason for the change, and any anticipated impact on hours or deliverables.

(b) **Review:** Consultant shall evaluate the request and respond within five (5) business days with an assessment of feasibility, impact on hours, and any additional costs.

(c) **Approval:** Client shall provide written approval before Consultant implements any change that would:

- Require hours exceeding the weekly limit
- Significantly alter previously agreed-upon deliverables
- Require specialized expertise outside the normal scope of Services

(d) **Documentation:** Approved changes shall be documented in writing and signed by both parties.

## **4.2 Automatic Triggers**

Any request requiring more than ten (10) additional hours of work in a given week shall automatically trigger the change request process.

# **5. OWNERSHIP AND INTELLECTUAL PROPERTY**

## **5.1 Client Materials**

All materials, information, and intellectual property provided by Client to Consultant ("Client Materials") shall remain the exclusive property of Client.

## **5.2 Work Product and Client Ownership**

Upon full payment of all fees due under this Agreement, all original work product, materials, deliverables, content, strategies, plans, reports, and other output created specifically for Client under this Agreement ("Work Product") shall be deemed works made for hire and shall be owned exclusively by Client. For clarity, this includes all client-specific materials, regardless of format or medium, including but not limited to written content, graphics, spreadsheets, presentations, marketing plans, campaign materials, training materials, scripts, templates, analysis, and strategic recommendations tailored to Client's business.

## **5.3 Consultant Materials**

Consultant shall retain ownership of all materials, processes, methods, know-how, and intellectual property developed or acquired by Consultant prior to or independent of this Agreement ("Consultant Materials"). Consultant grants Client a non-exclusive, perpetual license to use Consultant Materials incorporated into the Work Product.

## **5.4 Third-Party Materials**

Any third-party materials incorporated into the Work Product shall be subject to the terms of the applicable third-party licenses.

# **6. SOFTWARE AND TOOLS**

## **6.1 Client Responsibility**

Client shall be solely responsible for the purchase, licensing, and maintenance of all software and tools required for the Services. This Agreement does not include the purchase of any software.

## **6.2 Consultant Tools**

Consultant may use its own proprietary tools in the performance of Services. Such use does not transfer ownership or license rights to Client except as otherwise provided in Section 5.3.

# **7. CONFIDENTIALITY**

## **7.1 Definition**

"Confidential Information" means all non-public information disclosed by one party to the other, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

## **7.2 Confidentiality Obligations**

Each party shall: (a) Protect the confidentiality of the other party's Confidential Information using the same degree of care it uses to protect its own confidential information, but in no event less than reasonable care; (b) Not disclose the other party's Confidential Information except to its employees, contractors, and advisors who need to know such information and who are bound by confidentiality obligations at least as restrictive as those contained herein; (c) Not use the other party's Confidential Information for any purpose outside the scope of this Agreement; and (d) Return or destroy all materials containing Confidential Information upon the termination of this Agreement or upon request.

## **7.3 Consultant's Specific Obligations**

Consultant specifically agrees to: (a) Maintain strict confidentiality regarding Client's business practices, marketing strategies, customer lists, pricing, proprietary methods, trade secrets, and any other sensitive information disclosed during the engagement; (b) Not disclose the existence

or nature of Client projects or campaigns prior to their public release without Client's express written permission; (c) Secure all digital and physical materials containing Client's Confidential Information using appropriate safeguards; and (d) Ensure any third parties engaged by Consultant with Client's approval are bound by confidentiality obligations at least as restrictive as those contained herein.

## **7.4 Exclusions**

Confidential Information does not include information that: (a) Is or becomes publicly available through no fault of the receiving party; (b) Was known to the receiving party prior to disclosure; (c) Is rightfully received from a third party without a duty of confidentiality; or (d) Is independently developed by the receiving party without use of the disclosing party's Confidential Information.

## **7.5 Compelled Disclosure**

If the receiving party is compelled by law to disclose Confidential Information, it shall provide the disclosing party with prior notice of such disclosure (to the extent legally permitted) and reasonable assistance if the disclosing party wishes to contest the disclosure.

## **7.6 Survival**

The confidentiality obligations in this Section 7 shall survive termination of this Agreement for a period of three (3) years. The confidentiality obligations related to Client's trade secrets shall continue for as long as such information remains a trade secret under applicable law.

# **8. REPRESENTATIONS AND WARRANTIES**

## **8.1 Mutual Representations**

Each party represents and warrants that: (a) It has the full right, power, and authority to enter into and perform this Agreement; (b) The execution and delivery of this Agreement does not violate any agreement, instrument, or understanding to which it is a party; and (c) It shall comply with all applicable laws, rules, and regulations in performing its obligations under this Agreement.

## **8.2 Consultant Warranties**

Consultant represents and warrants that: (a) The Services will be performed in a professional and workmanlike manner consistent with industry standards; (b) Consultant has the requisite skills, experience, and qualifications to perform the Services; and (c) To Consultant's knowledge, the Work Product will not infringe any third-party intellectual property rights when used in accordance with this Agreement.

### **8.3 Disclaimer**

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, CONSULTANT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

### **8.4 No Guarantee of Results**

Client acknowledges that Consultant cannot guarantee specific business outcomes or results. Success depends on multiple factors outside Consultant's control, including but not limited to market conditions, competition, client implementation, and other factors.

## **9. LIMITATION OF LIABILITY**

### **9.1 Limitation of Liability**

EXCEPT FOR THE OBLIGATIONS UNDER SECTION 10, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, LOSS OF USE, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **9.2 Cap on Liability**

EXCEPT FOR THE OBLIGATIONS UNDER SECTION 10, EACH PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CLIENT UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

## **10. INDEMNIFICATION**

### **10.1 Consultant Indemnification**

Consultant shall indemnify, defend, and hold harmless Client from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to Consultant's gross negligence or willful misconduct in the performance of the Services.

## **10.2 Client Indemnification**

Client shall indemnify, defend, and hold harmless Consultant from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to: (a) Client's use of the Work Product; (b) Materials or information provided by Client; or (c) Client's violation of applicable laws, rules, or regulations.

# **11. RELATIONSHIP OF THE PARTIES**

## **11.1 Independent Contractor**

Consultant is an independent contractor, not an employee, agent, or representative of Client. Consultant shall be solely responsible for all taxes, withholdings, and other similar statutory obligations.

## **11.2 No Authority**

Consultant has no authority to bind Client or to incur any obligation on behalf of Client without Client's prior written approval.

# **12. GENERAL PROVISIONS**

## **12.1 Prior Agreements**

This Agreement supersedes and terminates all prior agreements between the parties regarding the subject matter hereof, including but not limited to the Services Agreement dated [date of previous agreement]. Client shall have no further obligation to make any payments under any prior agreement except as specifically provided herein.

## **12.2 Entire Agreement**

This Agreement, including any exhibits, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communications, whether written or oral.

## **12.3 Amendment**

This Agreement may be amended only by a written instrument signed by both parties.

## **12.4 Assignment**

Neither party may assign this Agreement without the prior written consent of the other party, except that either party may assign this Agreement to a successor in interest in connection with a merger, acquisition, or sale of all or substantially all of its assets.

## **12.5 Notices**

All notices under this Agreement shall be in writing and shall be deemed given when: (a) Delivered personally; (b) Sent by certified or registered mail, return receipt requested; (c) Sent by overnight courier with written confirmation of receipt; or (d) Sent by email with confirmation of receipt to the address or email specified below or such other address as either party may specify in writing.

**To Consultant:** Practical Prompting LLC., 13200 Pacific Promenade, #118 Playa Vista, CA 90094 Email: paul@practicalprompting.co

**To Client:** Tracker Projects, LLC., 10554 Mountain Laurel Way, Union, KY 41091 Email: amccombie@trackerproducts.com

## **12.6 Force Majeure**

Neither party shall be liable for any failure or delay in performance due to causes beyond its reasonable control, including but not limited to acts of God, natural disasters, pandemic, epidemic, war, terrorism, riots, civil disorders, governmental regulations, or other similar causes.

## **12.7 Severability**

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect.

## **12.8 Waiver**

The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or the right to enforce such provision.

## **12.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provision or rule.

## **12.10 Dispute Resolution**

Any dispute arising out of or relating to this Agreement shall be resolved through binding arbitration in Los Angeles, California, in accordance with the rules of the American Arbitration

Association. The prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

## 12.11 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

### CONSULTANT:

**Paul Chambers/Practical Prompting LLC.**

By:

Name: Paul Chambers


Title: Managing Director

Date: \_\_\_\_\_

### CLIENT:

**Tracker Products LLC.**

By:

  
Ben Townsend (Feb 28, 2025 05:19 PST)

Name: Ben Townsend

Title: CEO

Date: Feb 28, 2025






# Tracker Products+Practical Prompting RETAINER SERVICES AGREEMENT 02.24.25

Final Audit Report

2025-02-28

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