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EMAIL CREATIVE AND DESIGN SERVICES AGREEMENT

THIS AGREEMENT is made this <<CurrentDay>> day of <<CurrentMonth>>, <<CurrentYear>> by and between <<Company>> ("Designer") and <<CustCompany>> ("Customer").

Recitals

- A. Designer is in the business of providing Email Creative and Design services for a fee.
- B. Customer desires to have Designer render certain Email Creative and Design Services (the "Services") as set forth in the Specifications ("Exhibit B").
- C. Designer desires to render Email Creative Services as set forth in Exhibit B.

Agreements

In consideration of the mutual covenants set forth in this Agreement, Customer and Designer hereby agree as follows.

1. Engagement of Services.

Designer agrees to render to Customer Email Creative and Design Services, including:

- a) Create << Insert Design Mockup and Comp Count >> design mockups and comps for all templates or content to be created or used in future Email Marketing, Email Marketing Campaigns, Ad-hoc, individual sending of email or any other use that the Customer deems significant and required in the Specifications.
- b) Create a final design concept for each template or content based on the feedback from the initial number of design mockups. Customer may request additional design mockups beyond the initial number of design mockups for an additional fee of << Insert Rate for Additional

Customer Initials _____ Designer Initials _____

Mockups >> per mockup.

- c) Conduct compatibility testing for all templates or components across an agreed number of standard email clients. Standard email clients may include, but are not limited to: Outlook, Thunderbird (Mac and PC), Eudora, Mac Mail, Web-based email clients (Gmail, Yahoo, Hotmail, Horde, Open Web Mail) and any others required in the Specifications. For the purpose of this Agreement compatibility testing shall be LIMITED to just the Email Creative Services, templates or other components created by Designer under this Agreement. Designer is not responsible for the compatibility of any future content Customer may use in connection with the Email Creative and Design Services provided by Designer. Compatibility testing shall also be limited to current available builds of email clients and Designer shall not be responsible for how any template or content provided to customer renders or displays in future email clients.
- d) Demonstrate to Customer the results of all compatibility testing by either the use of screenshots sent to the customer, or through a live login to a provided email account or email client.
- e) Work with Customer's marketing department in order to aid initial content creation and development and present results to Customer for approval.
- f) Provide a detailed accounting for all pre-approved expenses associated with the services, as described in the Specifications. Expenses may include, but are not limited to: Stock and Royalty-Free photography, third-party testing services, additional templates and source code, any third-party contractors or sub-contractors required for fulfillment of the Specifications, and all transportation, courier or transit charges.
- g) Audit all invoices and expenses provided by third-party vendors to ensure accuracy.
- h) Provide other services as Customer may request from time to time, such as content creation, assistance to Customer's staff and employees, market research, analysis, or additional project consulting. All services are subject to Designer's hourly rate of <<HourlyRate>> per hour.

Customer Initials _____ Designer Initials _____

- i) Execute all other creative and design services as agreed upon in Exhibit B.

2. Specifications.

Designer agrees to develop the Email Creative and Design Services pursuant to the specifications set forth in Exhibit B attached hereto (the "Specifications"). All services not included in the Specifications shall be deemed to be "extra" and subject to the Designer's hourly billable rate.

3. Services Completion.

Designer will use reasonable diligence in the development of the Email Creative and Design Services and endeavor to deliver to Customer all agreed-upon specifications (or "Milestones") outlined in Exhibit B no later than <<DeliveryDate>>. Customer acknowledges, however, that this delivery deadline and the other payment milestones listed in Exhibit A are estimates, and are not required delivery dates. Designer will retain all creative source code, original works, files, digital media and other intellectual property for the entire project and provide Customer with the output formats only. Customer shall retain all of its intellectual property rights in any logos, graphics, text, images, or other components it owns and transmits to Designer for use in fulfillment or creation of services.

4. Ownership Rights.

- a) Designer shall endeavor to ensure that Customer shall be able to retain, under the fullest extent under the law, any and all intellectual property rights in any text, images, or other components created for Customer pursuant to this Agreement.
- b) Customer agrees that any material, content, plan, or idea prepared by Designer or submitted to Customer for approval at any stage that is not utilized at the termination of this Agreement shall remain the property of Designer. Customer agrees to return to Designer any materials it may have of Designer's, such as artwork, mockups, comps, text, digital media, film, photos, or any other physical embodiment of Designer's creative work performed while under this Agreement.

- c) Upon termination or expiration of this Agreement, Customer agrees to be solely responsible for any additional use of materials and advertisements created by Designer pursuant to this Agreement. Additional expenses may include but are not limited to: fees, licenses, translations, royalties, talent, and other associated fees. Designer's obligation in 4.a shall not apply with any respect to foreign use.

5. Compensation.

For all of Designer's services under this Agreement, Customer shall compensate Designer, in cash, pursuant to the terms of Exhibit A attached hereto. In the event Customer fails to make any payment referenced in Exhibit A by the deadline set forth in Exhibit A, Designer has the right, but is not obligated, to pursue any or all of the following remedies: (1) terminate the Agreement, (2) withhold all materials, services, and creative content administered by Designer on behalf of Customer, or (3) bring legal action.

6. Confidentiality.

Customer and Designer acknowledge and agree that the Specifications and all other documents and information related to the engagement of marketing or advertisement development (the "Confidential Information") will constitute valuable trade secrets of Designer. Customer shall keep the Confidential Information in confidence and shall not, at any time during or after the term of this Agreement, without Designer's prior written consent, disclose or otherwise make available to anyone, either directly or indirectly, all or any part of the Confidential Information. Excluded from the Confidential Information definition is anything that can be seen by the public in any advertising medium or

DEMO CONTRACT

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