

F. Agency Agreement

Gentlemen:

We are very pleased to serve as your advertising agency with respect to your product(s), _____, in the United States in accordance with the terms of this Agreement:

1. NATURE OF OUR SERVICES.¹ During the term of this Agreement, we will undertake to use all reasonable efforts on your behalf to render the services set forth on Schedule A to this Agreement.
2. MUTUAL EXCLUSIVITY. During the term of this Agreement we will not act as advertising agency for any product(s) or service(s) that is directly competitive with the products(s) or service(s) assigned to us by you, without your consent. In return, during the term of this Agreement, you will not engage any other advertising or public relations agency or entity providing similar services without our consent.
3. WE ACT AS YOUR AGENT. Our relationship is governed by your authorization of us to act as your agent in our dealings with third parties, on your behalf, to fulfill our obligations to you under this Agreement. Accordingly, we shall advise third parties that when materials and services are acquired, ownership vests in you in consideration of your payment therefor.
4. COMPENSATION. We will be compensated for our services as follows:
 - a. On all space and facilities purchased and talent engaged by us on your behalf, with your authorization, we shall bill you at the published rates or negotiated rates, as may be applicable, for space and facilities and at the authorized engagement rate for talent, plus any taxes, insurance, pension and welfare fund contributions, etc., applicable thereto. (You recognize that we are a signatory to collective bargaining agreements with Screen Actors Guild and American Federation of Television and Radio Artists and that the hiring of talent by us on your behalf, if any, will be subject to the terms of such agreements.)²
 - b. If no agency commission is granted or allowed to us on purchases of space or facilities or engagement of talent, or if such commissions would be less than fifteen percent (15%), we shall invoice you an amount which, after deduction of our cost, will yield us fifteen percent (15%) of such amount as agency commission.

¹ In lieu of the language of Paragraph 1, you may use: "We will undertake to use all reasonable efforts on your behalf to provide to you advertising services customarily rendered by a full-service advertising or public relations agency."

² Insert this language, if true. If you are a member of the AAAA, you may be deemed a signatory to the SAG/AFTRA union contracts.

- c. On art work, engravings, type compositions and any and all art and mechanical expenses incurred by us, pursuant to your authorization, we shall invoice you an amount which, after deduction of our cost, will yield us fifteen percent (15%) of such amount as agency commission.
- d. In addition to the above compensation you will pay us, for our services to you, a fee of _____ Dollars (\$_____) per year, payable in equal monthly installments of _____ Dollars (\$_____) on the first day of each month during the term of this Agreement.³
- e. If we undertake, at your request, special assignments such as market, product or distribution research, or other research (with the exception of research for copy development testing purposes), or special assignments such as market counseling or sales meeting presentations, the charges made by us will be agreed upon in advance whenever possible. If no agreement was made, we shall charge you at our standard rates for work performed by us. In addition, for materials or services purchased from outside sources under your authorization, we shall invoice you an amount which, after deduction of our cost, will yield us fifteen percent (15%) of such amount as agency commission.
- f. You will reimburse us for such cash outlays as we may incur, such as forwarding and mailing, telephoning (long distance, but not to you), and travel (but not to or from you), in connection with services rendered in relation to your account.

5. BILLING AND PAYMENT PROCEDURES.

- a. We shall invoice you for all media costs sufficiently in advance of our payment date to media to permit prepayment by you to enable us to take advantage of all available cash discounts. Bills estimating costs may be preliminarily used, and final bills will be reconciled and submitted as available.
- b. The cost of production materials and services shall be billed by us upon completion of the production job, or—if cash discounts are earnable—upon receipt of supplier invoice.
- c. On all outside purchases other than for media, we shall attach to the invoice proof of billed charges from suppliers.
- d. All cash discounts on agency purchases including but not limited to media, art, printing and mechanical work, shall be passed on to you provided our billing terms are complied with and there is no overdue indebtedness at the time of payment to the vendor.

³ Use this if you will charge a fee in addition to commissions.

- e. Rate or billing adjustments shall be credited or charged to you on the first billing date after we have been invoiced or as soon as otherwise practical.
- f. All invoices shall be rendered on or about the first day of each month.
- g. Invoices shall be submitted in an itemized format.
- h. All invoices are payable within ten (10) days of receipt. Invoices not paid within thirty (30) days of receipt may be charged at the rate of prime plus three percentage points (3%) per annum interest. For purposes of this section, the prime rate used shall be the prime rate set by Bank of America on the first days that such invoices become overdue.
- i. If you do not pay outstanding amounts due to us and we refer your account to an attorney for collection, you will pay our costs and attorneys' fees for such action, whether suit is brought or not.
- j. We reserve the right to change these payment terms if there is any impairment of your credit that, in the reasonable opinion of our accountants, might endanger future payments to us.

6. COMMITMENTS ON YOUR BEHALF TO THIRD PARTIES.

- a. All purchase of space and facilities with respect to the advertising of your product(s) and service(s) shall be subject to your prior approval.
- b. If you should direct us to cancel or terminate any previously authorized purchase, we shall promptly take appropriate action. You hold us harmless for any costs incurred by us as a result.
- c. You are disclosed principal and we shall act solely as your agent and media orders shall so provide. As between you and us, notwithstanding any contracts we may enter into with third parties in our name, you are solely responsible for obligations that we incur on your behalf with third parties until you have paid us therefor, after which we shall be solely responsible.
- d. We will use reasonable efforts to supervise media to guard against any loss to you through their failure to properly execute their commitments, but we cannot be held liable to you for their failure.
- e. Use of art work and photographs acquired on your behalf from third parties are normally licensed for use in designated territories and for specific purposes of time or usage. You will advise us if you want to purchase this art or photographs outright for unlimited use and we shall endeavor to negotiate a price therefor for your prior approval.

7. INSPECTION OF BOOKS. Any and all contracts, correspondence, books, accounts and other sources of information relating to services performed on your behalf upon reasonable prior notice shall be available for inspection at our office by your authorized representatives during ordinary business hours.
8. SAFEGUARDING OF PROPERTY.
 - a. We shall take all reasonable precautions to safeguard any of your property entrusted to our custody or control, but in the absence of gross negligence on our part we shall not be responsible for any loss, damage, destruction, or unauthorized use by others of any such property.
 - b. We shall not be responsible for the return of materials submitted to media after their use in publications unless you specifically request their return before they are sent to the media.
9. TERM OF AGREEMENT.
 - a. The term of this Agreement shall continue in full force and effect until terminated by either party upon written notice of such intention given ninety (90) days in advance, but in no event may this Agreement be terminated effective prior to the expiration of ____ () months from the commencement of the term. Commencement of the term shall occur when we both execute and deliver to the other a signed copy of this Agreement. Notices shall be deemed given on the day of mailing, or in the case of notice by facsimile, on the day it is telephoned.
 - b. Our rights, duties and responsibilities shall continue in full force during the period of notice, including the ordering and billing of advertising in print media whose closing dates fall within such period.
10. RIGHTS UPON TERMINATION.
 - a. At the termination of our Agreement we will deliver to you copy, art work, plates or other property belonging to you which may be in our possession upon payment of all outstanding invoices.
 - b. We will give all reasonable cooperation toward transferring with approval of third parties in interest, all contracts and other arrangements with advertising media or others, for advertising space and facilities and all rights and claims thereto and therein, upon being duly released from the obligation thereof. You, or your new agency must comply with all AFTRA/SAG requirements regarding transfer of liability to pay talent before we are obligated to release materials embodying talent.

- c. Upon termination, no rights or liabilities shall arise out of this relationship, regardless of any plans which may have been made for future advertising, except that any uncancelable contracts made on your authorization and still existing at termination hereof, which contracts were not or could not be assigned by us to you or someone designated by you, shall be carried to completion by us and paid for by you in the manner described in Paragraph 4, above.
11. INDEMNIFICATION.⁴ Except as is otherwise provided below, you will indemnify and hold us harmless from and against any liabilities and expenses (including attorneys' fees) reasonably incurred by us in respect of any action or proceeding brought or threatened to be brought before any court, administrative body, or other tribunal, which action arises out of the services rendered by us hereunder including, without limitation, liabilities and expenses arising out of claims with respect to advertising prepared by us.⁵

The preceding paragraph notwithstanding, we agree to indemnify and hold you harmless from and against any liabilities and expenses (including attorneys' fees) reasonably incurred by you in respect to any advertising materials prepared by us for you that give rise to any claim pertaining to libel, slander, defamation, copyright infringement, invasion of privacy, piracy and/or plagiarism covered by the then terms and conditions of any advertisers' liability insurance policy wherein we are named insured.

12. MATERIALS AND IDEAS. During the term of this Agreement we will not retain for the benefit of ourselves or disclose to any third party (unless required by law, court order, or relevant regulation) any of your Trade Secrets, as defined in the Maryland Uniform Trade Secrets Act, Section 11-1201 of the Commercial Law Article of the Annotated Code of Maryland.
13. GOVERNING LAW.
- a. This agreement shall be interpreted in accordance with the laws of the State of Maryland. We both consent to jurisdiction and venue in the State and Federal courts of Maryland if any controversy shall arise hereunder.
- b. This letter contains the entire agreement of the parties, and may not be modified unless signed by an authorized officer/representative of both parties.

⁴ Use this clause if you have advertisers' and agencies' liability insurance. If you do not have such insurance, use the following paragraph 11.

⁵ Alternate Paragraph 11: We agree to exercise our best judgment in the preparation and placing of all advertising and publicity for you, with a view to avoiding any claims, proceedings or suits being made or instituted against you or ourselves. It is mutually agreed, however, that you indemnify us against any loss we may incur as the result of any claim, suit or proceeding made or brought against us based upon any advertising or publicity that we prepared for you and that you approved before its publication or broadcast.

- c. The failure of either party to insist, in any one or more instances, upon a strict performance of any of the covenants contained herein shall not be construed as a waiver or a relinquishment for the future of such covenant, and the same shall continue in full force and effect.

If the above accords with your understanding and agreement, kindly indicate your consent hereto by signing in the place provided below.

Very truly yours,

By: _____

ACCEPTED AND AGREED:

BY: _____ (SEAL)

Date: _____

(Witness)