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**WORK FOR HIRE AGREEMENT FOR COMMISSIONED ART WORK**

**AND EQUIPMENT USE AND LOCATIONS ACCESS AGREEMENT**

This Work for Hire Agreement for Commissioned Art Work and Equipment Use and Locations Access Agreement (“Agreement”) is entered into the date listed on Attachment 1 hereto (the “Effective Date”), by and between [INSERT COMPANY NAME] (the “Company”) with offices at [INSERT COMPANY ADDRESS], and the entity specified on Attachment 1 hereto (“Artist”), with the address of specified on Attachment 1 hereto (each individually referred to as a “Party” and collectively referred to as the “Parties”).

**WITNESSETH:**

**WHEREAS**, Company desires to commission Artist to perform services as an artist and to make creative contributions in connection with art and/or design work for Company and its distributors (the “Art”) for the project listed on Attachment 1 hereto (the “Project”); and

**WHEREAS**, Artist wishes to perform services for Company as an artist and to make creative contributions in connection with the Art.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants herein contained and intending to be legally bound hereby, the Parties agree as follows:

# COMMISSION

## Artist agrees to render personal services as an artist and to make creative contributions in connection with the Art in the amount an in the manner provided for in Attachment 1 hereto. Payment is conditioned on Artist’s full and faithful performance of the terms of this Agreement to the satisfaction of Company. Artist further agrees that the compensation set forth in this Section 1.01 is full and complete payment to Artist for all services in connection with the Art. No additional sums whatsoever will be due to Artist.

## Artist agrees to render its personal services to the best of its ability and of the same high artistic quality as induced Company to engage Artist, and agrees to perform its services at the times and places and in the manner Company requests. The Art shall be subject to the Company’s approval (in its sole discretion), in each of form, content, and appropriateness for the Project. Company shall retain final editing authority over the Art.

# DISPOSITION OF THE ART

## Artist agrees that Company shall own all right, title, and interest in and to the Art, including, without limitation, any and all copyrights and extensions and renewals of such copyrights, free of any claim whatsoever by Artist or by any persons deriving any rights from Artist, including any claim of moral rights or their equivalent. Artist represents and agrees that its entire contribution to the Art is specially ordered or commissioned for use as a contribution to a collective work and that, as such, its entire contribution to the Art is a work made for hire for Company, free of any claim whatsoever by Artist or by any persons deriving any rights from Artist. If Artist’s contribution to the Art is determined not to be a work made for hire for Company, then Artist’s contribution to the Art, together with all rights therein and thereto, shall be irrevocably assigned and transferred to Company by this Agreement pursuant to Section 2.02.

## Artist agrees to irrevocably assign and transfer to Company any and all right, title, and interest the Artist has or may have in and to the Art, including any and all copyrights and all other rights of any kind that may now or hereafter exist relating to the Art. Artist agrees to execute any and all documents requested by Company to evidence, record, or effectuate this assignment and/or to assist Company in applying for or obtaining any copyright, or other registration relating to the Art at Company’s expense.

## To the extent any right, title, or interest the Artist has or may have in and to the Art is not assigned and transferred to Company pursuant to Section 2.02, the Artist hereby grants to Company an irrevocable, paid up, exclusive worldwide license to (i) display, use, reproduce, distribute, sell, and exploit the Art; (ii) prepare derivative works based in whole or in part on the Art in any medium; and (iii) use Artist’s name and likeness in connection with the Art.

## Company shall accord Artist appropriate credit on works embodying the Art. Such credit shall be in substantially the form specified on Attachment 1 hereto. Company’s failure to comply with the provisions of this paragraph shall not be deemed a breach of this Agreement, provided that, if you notify Company of that failure, Company shall use reasonable efforts to accord production credit to you prospectively.

# REPRESENTATIONS AND WARRANTIES

## Artist represents and warrants that (i) Artist has the full right, power and authority to provide the Art to Company; (ii) the Art does not in any way infringe, invade, or violate the intellectual property rights or personal rights of any third party; (iii) Artist is free to enter into and to perform as set forth in this Agreement; and (iv) all works created or furnished by Artist under this Agreement will be unpublished, wholly original, and not copied from any sources, except the public domain or material furnished by Company.

## Artist agrees to indemnify, defend, and hold Company, and its respective successors, assigns, agents, attorneys, distributors, licensees, past and present officers, directors and employees harmless against any and all claims, suits, actions, proceedings, judgments, liabilities, loses, damages, costs and expenses (including reasonable attorneys’ fees and legal costs) arising from or in connection with its (i) breach of its representations, warranties, or obligations hereunder, including, without limitation, those contained in Sections 3.01, 4.01 and 4.02; and (ii) negligent or intentional acts or omissions.

USE OF Company’S EQUIPMENT AND LOCATIONS

## Company hereby grants to Artist the right to use the certain of Company’s equipment (the “Equipment”) and enter Company’s locations to use the Equipment for the production of the Art subject to the terms and conditions contained herein. Artist agrees that it will not permit any other person to use the Equipment at any time or for any reason, other than its agents or employees that are qualified to use the Equipment. Artist agrees to use the Equipment (i) only in connection with the production of the Art, (ii) in a manner for which the Equipment is manufactured, (iii) in no manner for which the Equipment should not be used as specified by the manufacturer or otherwise, and (iv) in the safest manner possible. Artist understands and acknowledges that Company has made no representation or warranty as to the safety of its locations, that Artist enters any location at its own risk, and that Company shall not be responsible or liable for any injury to the person or property of Artist while Artist is at any of Company’s locations.

## Artist represents and warrants that it has inspected and tested the Equipment, and that the Equipment is in good, and to the extent operable, operating condition. Artist represents and warrants that it understands the proper methods of operating the Equipment.

## Artist acknowledges and agrees that after it completes its use of the Equipment, the Equipment will be in same condition in which it is first used by Artist. Artist shall be responsible for the cost of repair of the Equipment in the event of damage, and shall be responsible for the full replacement of the Equipment, with comparable new Equipment, in the event of its loss or destruction.

## FOR ALL PURPOSES IN CONNECTION WITH USE OF THE EQUIPMENT UNDER THIS AGREEMENT, ARTIST AGREES AND ACKNOWLEDGES THAT (I) ARTIST IS ACCEPTING TO USE THE EQUIPMENT “AS IS,” (II) Company HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE EQUIPMENT, (III) Company EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES (INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE EQUIPMENT, AND (IV) ARTIST IS ENTERING INTO THIS AGREEMENT AND ACCEPTING TO USE THE EQUIPMENT BASED ON ITS OWN INVESTIGATIONS AND INFORMATION AND HAS NOT RELIED ON ANY REPRESENTATION BY Company WITH RESPECT TO THE EQUIPMENT.

## In consideration of the right to use the Equipment and access Company’s locations, Artist hereby agrees to indemnify, defend and hold harmless Company, and its directors, officers, employees and agents from and against any and all claims, losses, suits, damages, actions or expenses (including but not limited to attorneys’ fees), whether or not involving a third party claim, arising out of or resulting from the use of the Equipment, access to Company’s locations or the production of the Art, including, without limitation, in connection with (i) damages to or loss of use of the Equipment, or damage or loss of any other equipment or property, whether owned by Artist or any third party, (ii) bodily injury or sickness, disease, or death caused by any use or malfunction of the Equipment, (iii) injury or damage to the person or property of Artist or any of Artist’s employees, contractors or agents, and (iv) injury or damage to the person or property of Company or any of Company’s employees, contractors, or agents. Artist waives and forever discharges all claims against Company for any and all damages, including, without limitation, incidental, special or consequential damages, in connection with the furnishing, performance or use of the Equipment and access to Company’s locations. Artist accepts all risks in connection with the use of the Equipment and access to Company’s locations. The indemnity, release and waiver contained in this provision are material conditions of this Agreement, and Artist agrees and acknowledges that Company is relying upon such material conditions in connection with its grant of rights hereunder to Artist.

MISCELLANEOUS

## Titles, headings, and captions (if any) of sections or paragraphs in this Agreement are for convenience only and neither limit nor amplify the provisions of this agreement.

## The terms and provisions of this Agreement shall be binding upon and shall extend to, and inure to the benefit of the Parties and their representatives, successors and assigns. This Agreement or any interest herein shall not be assigned, delegated, or transferred (including but not limited to by operation of law) by Artist without the prior written consent of Company.

## In the event that any term or provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby.

## It is expressly understood and agreed that certain provisions of this Agreement, which by their nature are expected to survive the termination or expiration of this Agreement, including but not limited to Sections 2.01, 2.02, 2.03, 3.01, 3.02, 4.03, 4.05 5.03, 5.04, 5.05, and 5.08, shall survive the termination or expiration of this Agreement.

## This Agreement shall be construed in accordance with the laws of the State of [INSERT STATE], excluding its conflicts of law provisions. The Parties hereby irrevocably consent to the exclusive jurisdiction of the federal and state courts located in [INSERT COUNTY, STATE] in connection with any action or proceeding arising out of or relating to this Agreement or any document or instrument delivered pursuant to, in connection with, or simultaneously with this Agreement. Any such action, suit or proceeding must be brought only in the appropriate state or federal court located in [INSERT COUNTY, STATE] and each Party covenants and agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, suit, or proceeding, any claim that such Party is not subject personally to the jurisdiction of such court, that such Party's property is exempt or immune from attachment or execution, that the action, suit, or proceeding is brought in an inconvenient forum, that the venue of the action, suit or proceeding is improper, or that this Agreement or the subject matter hereof may not be enforced in or by such court.

## Any delay or forbearance by any Party in exercising any right hereunder shall not be deemed a waiver of that right. A waiver of any term, condition, right or remedy contained in this Agreement, or at law or in equity, on any occasion, will not be deemed a waiver of such term, condition, right or remedy on any future occasion, or of any other term, condition, right or remedy contained in this Agreement, or available at law or in equity.

## 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 the event it is necessary for either Party to enforce its rights under this Agreement, the prevailing Party in any lawsuit shall be entitled to recover from the non-prevailing Party, all of its attorneys’ fees, costs and other expenses associated with the enforcement of its rights under this Agreement.

## The relationship between Company and Artist is that of owner and independent contractor and nothing contained in this Agreement will be interpreted or construed as creating a partnership, joint venture, agency, franchise, employment or any other such relationship between the Parties. Neither Party will have the authority to, or represent itself as having the authority to, bind or obligate the other Party in any manner whatsoever.

## Each Party assumes no liability and will not be liable for any failure to perform or delay in performance solely as a result of strikes, lockouts, or any other labor disputes, floods, fires, hurricanes, or any other cause beyond the control and without the fault of the performing Party. Each Party will timely notify the other Party if it anticipates any potential delay in filling its performance.

## This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral and written negotiations or agreements between the Parties. This Agreement, may not be changed, amended or modified, except by a writing signed by both Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**ARTIST**: [ARTIST NAME]

By:

Name:

[IF APPLICABLE; TITLE AS BELOW]

Date:

**Company**:

By:

Name:

Title:

Date:

**ATTACHMENT 1**

|  |  |
| --- | --- |
| **ARTIST NAME:**  [INCLUDE FULL ENTITY NAME] |  |
| **ARTIST ADDRESS**  [NAME]  [STREET]  [CITY, STATE ZIP] |  |
| **PROJECT DESCRIPTION:**  [INSERT PROJECT DESCRIPTION] |  |
| **FEE:**  [$xx.xx] per hour |  |
| **PAYMENT TERMS:**  [INSERT PAYMENT TERMS]  **PRODUCTION CREDIT:**  “[HOW ARTISTS WANTS WORKS MARKED see 2.04]” |  |