



Engagement Agreement

This Engagement Agreement (“Agreement”) is made and entered into as of the date on your signed proposal (the “Effective Date”), by and between Nessen Kohlasch & Associates, Inc., a Massachusetts corporation, with a principal office located at 48 Harding Road, Lexington, Massachusetts 02420 (“NK&A”), and the company. (“Client”). NK&A and Client shall be referred to individually as NK&A and Client or a “Party”, and collectively as the “Parties”.

The Parties hereto hereby agree as follows:

1. Services

Client hereby retains NK&A to provide the Services set forth in the Proposal. This Agreement (together with the Proposal and any subsequent Proposals(s) that may be executed by the Parties and hereafter attached to this Agreement) shall prescribe the terms and conditions under which NK&A shall perform the Services for Client. Each Proposal shall be subject to the terms and conditions of this Agreement.

2. Fees/Invoicing

The Parties agree that NK&A will be compensated by Client for its professional fees in connection with the Project as provided in your Proposal. In addition, Client will reimburse NK&A for reasonable expenses incurred, which expenses may include external costs such as travel and courier. Where NK&A engages the services of a third party vendor to provide specific services or products for Client, including but not limited to an intellectual property search should Client request it, Client agrees to pay the vendor according to the terms stated in the vendor’s separate invoice.

Promptly after the completion of the Project, NK&A will provide Client with an invoice detailing all outstanding fees and costs, adjusted to reflect any Client-approved cost increases or cost efficiencies attained while executing the Project. Should Client request NK&A to perform any additional projects or services, such projects or services will be subject to a separate compensation arrangement for any such requests on a new or amended Proposal outlining the additional services and fees. Should Client elect to cancel the Project or the Services for reasons beyond the control of NK&A (such as changes in management or business conditions or direction), Client agrees to pay NK&A fees for the Services performed, as well as costs incurred, through the termination date.

NK&A recognizes that many business priorities compete for Client’s time, attention and resources. Client agrees that if Client, by choice or circumstance, directly or indirectly, suspends work on its Project for more than forty-five (45) days by failing to provide NK&A with the cooperation or resources needed to continue or complete the Project, NK&A shall notify Client that the Project has been placed on hold until Client directs NK&A that it is ready to re-start. Upon re-starting the Project, NK&A shall assess (a) remaining deliverables due to Client; (b) any unpaid outstanding balance due from Client; and (c) any adjustments necessary to the timeline and cost of implementing the



Project, along with a re-start fee, as well as a similar fee to any third party vendor whose services have been suspended by Client.

Client agrees to pay all invoices within thirty (30) days. NK&A reserves the right to assess a one and one-half percent (1½%) per month finance charge for invoices that remain unpaid after thirty (30) days. Client also agrees to reimburse NK&A for all expenses, including reasonable attorneys' fees, incurred in the collection of any overdue and unpaid invoices. In the unlikely event that NK&A invoices remain unpaid for more than sixty (60) days, NK&A may also, at its discretion, suspend work on Client's account or terminate in accordance with Section 5.2 herein. In addition, in the event any invoices become overdue, all subsequent payments may, at NK&A's option, first be applied to those invoices which are overdue for the longest period of time until all payments are up to date. Upon payment in full of all outstanding balances, NK&A shall release the final work product to Client.

NK&A reviews each bill for accuracy and value before sending it to Client. However, it is important that Client also immediately review NK&A bills and approve them for payment. Client agrees that all NK&A invoices are deemed to be approved thirty (30) days after receipt unless Client has notified NK&A in writing of Client's disapproval or dissatisfaction. If Client does not so inform NK&A, NK&A will continue to provide Services in reliance on Client's implied approval of NK&A billings.

3. Confidential Information

3.1 Confidential Information. NK&A shall retain in confidence during the term of this Agreement and thereafter all information transmitted to it by Client, in writing or orally, whether by letter or by the use of an appropriate proprietary stamp or legend, that Client designates as proprietary and/or confidential ("Confidential Information"), and will make no use of such information, except as permitted under and to accomplish the purposes of this Agreement. Notwithstanding the foregoing, information which is orally or visually disclosed to NK&A by Client, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, shall constitute Confidential Information if Client, within thirty (30) days after such disclosure, delivers to NK&A a written document or documents describing such Confidential Information and referencing the place and date of such oral, visual or written disclosure and the names of the employees or officers of NK&A to whom such disclosure was made. The obligations of this Section 3 shall not apply to the identity of Client or to any information: (i) that is independently developed by NK&A or lawfully acquired or received without violating any of its obligations under this Agreement (ii) that is, or becomes, generally available to the public without breach of this Agreement by NK&A (iii) that at the time of disclosure was known to NK&A free of restriction as evidenced by documentation of NK&A, or (iv) that Client agrees in writing is free of restrictions.

In the event that NK&A receives a request to disclose all or any part of any of Client's Confidential Information under the terms of a valid and effective subpoena or order issued by a court, judicial or administrative agency or by a legislative body or committee, such disclosure by NK&A shall not constitute a violation of this Agreement provided that NK&A promptly notifies Client of the existence, terms and circumstances surrounding such request, thereby affording Client an opportunity, at Client's



sole cots, to seek a protective order or other legal redress. Client acknowledges and agrees that NK&A shall be entitled to identify Client in any marketing publications or materials or information, or to disclose to other parties the fact that NK&A provides or has provided Services to Client.

3.2 Return of Materials. Upon Client's written request, upon or within two (2) years of termination of this Agreement, NK&A will deliver to Client all of Client's property, including but not limited to all Confidential Information, which Client delivered to NK&A and which were necessary for NK&A to perform the Services. Client acknowledges that NK&A maintains a two (2) year retention policy for Client materials and that NK&A cannot guarantee Client availability of such materials after two (2) years from conclusion of a Project.

4. Ownership; Intellectual Property Responsibility

NK&A acknowledges and agrees that all photography, brochures, manuals, film, signage, and other materials (collectively referred to as "Materials") generated by or for NK&A in the performance of the Services under this Agreement shall be deemed "work made for hire" and shall, between Client and NK&A, be Client's exclusive property. Likewise, Client acknowledges that NK&A retains ownership of all works of authorship created by or for NK&A prior to or separate from the performance of Services under this Agreement, including, but not limited to, NK&A's proprietary information/services and third party relationships held by NK&A. Additionally, Client acknowledges that, in the event the Services include graphic design services, Client shall own all right, title and interest in and to the final work product delivered to Client at the conclusion of the Project, which shall include only the final concept and/or design chosen and used by Client. NK&A does not include in the Services the obtaining or analyzing of any rights to intellectual property including but not limited to copyright, trademark, trade name, trade dress or patent. Any intellectual property search shall be the responsibility of Client and Client's counsel.

5. Term and Termination

5.1 Term. The term of this Agreement shall commence as of the Effective Date and shall remain in effect until terminated in accordance with the terms hereof, provided, however, that this Agreement will remain in effect after such date for the sole purpose of, and until the completion of, any Services specified on any then outstanding Proposals or any amendment hereto entered into by the Parties during the term of this Agreement.

5.2 Termination With Cause. Notwithstanding anything herein to the contrary, either Party may terminate this Agreement if the other Party shall default in any of its payment or performance obligations under this Agreement upon fifteen (15) days prior written notice to the other specifying the nature of the default, unless such other Party shall cure that default within the fifteen (15) day notice period.

5.3 Termination With or Without Cause. Either Party may terminate this Agreement without cause upon thirty (30) days prior written notice.



5.4 Responsibilities. In the event of termination of this Agreement by either Party, Client shall remain responsible for payment for any fees and expenses for Services that remain unpaid which were performed by NK&A prior to the effective date of any such termination.

6. Independent Contractor

Nothing in this Agreement or in the course of business between the Parties shall be deemed or construed to create a partnership, joint venture, agency, or otherwise as participants in a joint or common undertaking, or to make or constitute either Party a representative or agent of the other. Neither Party shall have any authority to direct or control any activities of the other, or any power to legally bind, obligate or commit the other in any way whatsoever. In all of its performance hereunder NK&A is acting solely as an independent contractor.

7. Publicity

During the term of this Agreement, including all renewals and extensions of this Agreement, Client agrees to permit NK&A to list Client's name and display Client's logo on NK&A websites as a client of NK&A, should NK&A so choose to do. Excepting that permitted use, none of the Parties shall use the name, any trademark, or any other identifier of the other Party for any other purpose, without the prior written consent of the Party whose name is proposed to be used, nor shall either Party disclose the existence or substance of this Agreement or any Proposal except as required by law.

8. Disputes

In the event of any dispute, controversy or claim between the Parties arising out of or relating to the Agreement, or the breach, termination or invalidity thereof (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of a Dispute is delivered by either Party, then either Party may pursue all of its remedies available pursuant to the Agreement. The parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner. In the event any Dispute hereunder results in litigation, the Parties agree that the venue for such litigation shall be conducted in the courts and under the laws of the Commonwealth of Massachusetts.

9. Indemnification

Because of Client's intimate familiarity with its business and the fact that NK&A serve as Client's agent for purposes of performing the Services, NK&A cannot undertake to verify all the facts supplied to NK&A by Client. Because of this, Client agrees to indemnify, defend and hold harmless NK&A and its employees, officers, directors, shareholders and agents from and against all liabilities, losses, damages or expenses, including reasonable attorneys' fees and costs, which NK&A may incur as the result of any claim, suit or proceeding brought or threatened arising out of the nature or use of Client's products or services or any assertions NK&A may make on Client's behalf, including assertions about Client's company, its products or services, or about Client's competitors and any of their products or services, in any materials NK&A may prepare for Client, if, and only if, the assertions



are based on information, representations, reports, data or releases supplied to NK&A by or through Client, or which Client approves (excluding claims covered under NK&A's indemnity below).

NK&A will indemnify, defend and hold harmless Client and Client's employees, officers, directors, shareholders and agents against all liabilities, losses, damages or expenses, including reasonable attorneys' fees and costs, which Client may incur as the result of any claim, suit or proceeding brought or threatened against Client pertaining to libel, slander, defamation, invasion of privacy and/or plagiarism, except to the extent that such claims arise from information or materials supplied by or through Client.

Except for breach of Section 3 (Confidentiality) and for the indemnification undertaking provided above, in no event will either Party be liable for indirect, special, incidental or consequential damages resulting from the acts or omissions of such Party.

In the event NK&A is called upon to respond to or assist Client in connection with litigation commenced or threatened against Client by third parties (for example, in complying with a document subpoena), NK&A will be entitled to staff time charges and reimbursement of out-of-pocket expenses for services rendered to Client, or time spent by NK&A in connection with such matters. NK&A's total aggregate liability for any claim of any kind arising as a result of or related to this Agreement, whether based in contract, warranty, or any other legal or equitable grounds, shall be limited to the amounts received by NK&A from Client for the particular Project(s) which form(s) the basis of such claim.

10. Miscellaneous

10.1 Notices. All notices and other communications hereunder shall be in writing and shall be sent via verifiable facsimile, nationally-recognized overnight mail or certified mail, postage prepaid, to the Parties hereto at their respective addresses specified herein, subject to the right of either Party to change its address by written notice. Notices shall be deemed to have been given upon (i) the date transmitted via facsimile with confirmation of receipt thereof (ii) the business day after the date sent by overnight courier or (iii) three (3) days following the date such notice was mailed by certified mail. Notices may be confirmed by email.

10.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

10.3 No Waiver. No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by a Party on any one occasion is effective only in that instance and will not be construed as a bar to or a waiver of any right on any other occasion.



10.4 Validity. Should any part of this Agreement be declared or determined by any court having jurisdiction to be illegal or invalid, the validity of the remaining parts shall not be affected by said illegal or invalid portion, and said illegal or invalid portion shall not be deemed to be part of this Agreement.

10.5 Entire Agreement. This Agreement and the attached Prooposal(s) constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements and understandings in connection therewith.

10.6 Assignment. This Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party.

10.7 Headings. The headings and titles of the various sections of this Agreement are intended solely for convenience of reference and are not intended to define, limit, explain, expand, modify or place any construction on any of the provisions of this Agreement.

10.8 Multiple Copies or Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one (1) set of the counterparts.

10.9 Force Majeure. In the event either Party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reasons of strike, lockouts, restrictive government or judicial orders or decrees, riots, insurrection, terrorism, war, Acts of God, inclement weather or other similar reason or a cause beyond such Party's control, then performance of such act shall be excused for the period of such delay. Any timelines affected by such force majeure shall be extended for a period equal to that of the delay, provided that, should any delay continue for more than thirty (30) days, either Party may terminate this Agreement or any Prooposal immediately upon written notice and Client shall only be responsible for any fees and expenses due to NK&A for Services rendered to the date of termination. Notice of the start and stop of any such force majeure shall be provided to the other Party.

10.10 Modification. This Agreement may be modified only by an instrument in writing specifically referencing this Agreement and signed by an authorized representative of the Party against whom enforcement of the modification is sought.



10.11 Succession. This Agreement, in its entirety, shall inure to the benefit of and be binding on the successors and assigns of Client and NK&A.