

## AGREEMENT FOR MARKETING AND BRAND DEVELOPMENT SERVICES

This AGREEMENT FOR MARKETING AND BRAND DEVELOPMENT SERVICES (“**Agreement**”), effective as of \_\_\_\_\_ (“**Effective Date**”), is by and between APlus Photography, LLC, with offices located at 123 Texas Road, Houston, Texas 77005 (“**AP**”), and \_\_\_\_\_ (“**Client**”).

1. **MARKETING AND BRAND DEVELOPMENT SERVICES.** AP will perform services for Client in connection with the planning, provision, creation and/or placing of branding, research, advertising, marketing, consulting, creative and/or digital services for Client, during the term, as provided in the attached (Addendum A) Statement of Work (“**SOW**”), incorporated herein by reference (such services are collectively referred to as “**Services**”). During the term of this Agreement, Client may wish to assign additional projects, products, or services to AP beyond the Services outlined in the SOW (“**Out-of-Scope Assignments**”). AP agrees to accept such Out-of-Scope Assignments only upon a separate written agreement with Client regarding additional compensation to be paid to AP and other relevant terms and conditions.
2. **INITIAL CLIENT MEETING AND APPROVAL OF MATERIALS.** All AP projects require a thorough interview and intake appointment (“**Workshop**”). AP will deliver a 1<sup>st</sup> look proof within an agreed-to time from the date of the Workshop (providing all base content has been provided to AP). AP shall submit to Client for its approval all elements of any materials to be produced or placed hereunder, including, but not limited to, all copy, layouts, slogans, websites, artwork, graphic materials, and photography (collectively, “**Materials**”). An AP project will be considered complete after a MAXIMUM of 3 rounds of revisions have been completed. Additional revisions will be charged at \$65 per round.
3. **FEES, PAYMENTS AND EXPENSES.**
  - 3.1. Flat Fee. As compensation for any website services rendered pursuant to this Agreement, Client agrees to pay AP a flat fee as outlined in Addendum A.
  - 3.2. Subscription Program. As compensation for any social media development services rendered pursuant to this Agreement, Client agrees to pay the associated fees on a recurring monthly basis as outlined in Addendum A.
  - 3.3. Expenses. Client is responsible for reasonable out-of-pocket travel expenses incurred in rendering AP’s professional services, as well as all necessary incidental expenses (collectively, “**Expenses**”) Incidental expenses include all expenses incurred for Client’s account in connection with AP’s rendition of services and performance of duties hereunder, including but not limited to the cost of packaging material for shipment, postage, messenger, shipping charges, copyright or trademark charges, website hosting, and any advertisement buys associated with radio, print, or other media and online sources. AP shall obtain Client's prior written authorization before incurring any individual Expense or cost in excess of \$50.00. All Expenses not paid directly by Client

shall be paid within fifteen (15) days of receipt of AP's invoice. All Expense reimbursements shall be made at AP's direct out-of-pocket costs, without any markup for overhead, administrative costs, or otherwise.

- 3.4. Taxes. Client shall pay, reimburse, and/or hold AP harmless for all sales, use, transfer, privilege, tariffs, excise, and all other taxes and all duties, whether international, national, state, or local, however designated except income taxes, which are levied or imposed by reason of the performance of the professional services under this Agreement, except income taxes.
- 3.5. Other Fees. Unless otherwise provided in this Agreement, all other services, including Out-of-Scope Assignments, rendered by AP shall be subject to additional compensation under a separate agreement between AP and Client.
- 3.6. Payment Of Invoices. All invoices shall be paid by Client within fifteen (15) days of receipt. Payments not made within such time period shall be subject to late charges equal to the lesser of (i) eight percent (8%) per annum of the overdue amount or (ii) the maximum amount permitted under applicable law. AP may suspend all services on seven (7) days written notice until the amounts outstanding are paid in full.
- 3.7. Trademarks. AP may create or develop trademarks for Client, in the form of taglines, slogans, hand-drawn logos, designs, or product and brand names (collectively, the "Marks"). Such Marks remain the sole property of AP. AP shall be responsible for confirming availability and registering such Marks, and Client agrees to assist in coordinating the effort associated with clearing and registering the Marks.
- 3.8. Copyright. In the event that any copyrighted works are created as a result of the services provided by AP in accordance with this Agreement, AP owns all copyrights in any and all work(s) it creates or produces, whether registered or unregistered. Any and all products, whether tangible or intangible, produced or created in connection with, or in the process of fulfilling this Agreement, are expressly and solely owned by AP and may be used in the reasonable course of AP business.
4. **MARKETING**. Client hereby grants AP the right to use the name and service marks of Client in its marketing materials or other oral, electronic, or written promotions, which shall include naming Client as a client of AP and a brief scope of services provided. In addition, Client hereby grants AP the right to display its logo (or other identifying information) and a hyperlink to AP's website on the home page of Client's website. Any use of AP's logos or links on Client's website must be approved in writing by AP. Either party may elect to issue a press release related to this Agreement. In doing so, any release shall be approved by the other party and such approval shall not be unreasonably withheld.
5. **TERM AND TERMINATION**.
  - 5.1. Term. This Agreement will commence on the Effective Date and shall continue and will continue in full force and effect for one (1) year.

- 5.2. Termination. Either party may terminate this Agreement earlier than the one (1) year term discussed above by giving 48 hours written notice to the other party upon the occurrence of any of the following events:
- 5.2.1. Either party wishes to terminate the Agreement, for any reason, and such decision, and respective 48 hours written termination notice to the other party, occurs within ninety (90) days of the Effective Date.
  - 5.2.2. The commission by the other party of a material breach of this Agreement, which breach is not cured within thirty (30) days of the other party's receipt of written notice of such breach; or
  - 5.2.3. The other party has or may be commencing a voluntary or involuntary bankruptcy, receivership or similar proceeding with respect to such other party.
- 5.3. Effect of Termination. Client shall pay AP for all services rendered and work performed up to the effective date of termination. Accordingly, AP will send to Client a final bill for the last month of service prorated by the number of days of service for the respective month prior to termination. Client shall pay the invoice within ten (10) days of receipt.
- 5.4. Return of Proprietary or Confidential Information. Within ten (10) days after the termination or expiration of this Agreement, each party shall return to the other all Proprietary or Confidential Information (defined below) of the other party (and any copies thereof) in the party's possession or, with the approval of the party, destroy all such Proprietary or Confidential Information.
6. **CONFIDENTIALITY**. The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "**Proprietary or Confidential Information**" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) is subject to disclosure under court order or other lawful process. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party's Proprietary or Confidential Information shall remain the sole and exclusive property of that party. The Parties agree that in the event of use or disclosure by the other party other than as specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this Agreement, AP and Client acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of three (3) years from the Effective Date.
7. **REPRESENTATIONS AND WARRANTIES**.

7.1. AP represents and warrants that (i) the Services provided hereunder will be performed in a professional manner, and (ii) any software, hardware, websites, web-based or technology-related Services (collective “**Electronic Services**”) will be free of material bugs or defects for thirty (30) days after delivery. Such warranty does not extend to any modification of Services by anyone other than AP at the time of such modification, any abuse or misuse of Services by Client, or use of Services in an operating environment that differs materially from the specifications agreed to by the parties.

7.2. **DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN THIS AGREEMENT, ELECTRONIC SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND AP EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

## 8. **INDEMNITIES.**

8.1. **Client Indemnity.** Client shall indemnify, defend, and hold harmless AP, its parents, subsidiaries, and affiliated companies, and its and their respective employees, officers, directors, shareholders, and agents (each an “**AP Indemnitee**”) from and against any and all loss incurred by an AP Indemnitee based upon or arising out of any third-party claim, allegation, demand, suit, or proceeding (each, a “**Claim**”) made or brought against any AP Indemnitee with respect to any advertising, branding, research or other products or services which AP prepared or performed for Client hereunder to the extent that such Claim relates, in whole or substantial part, to: (i) the inaccuracy of any information supplied by Client or its agents to AP including, without limitation, information concerning Client’s products and services, the products or services of Client’s competitors or Client’s product or service category; (ii) the use of any marketing, branding, research, advertising, packaging, trademark, software, hardware or other materials, or components thereof, furnished by Client or its agents to AP to be included in any Materials or media placements; (iii) the use of any materials or data provided or created by AP and changed by Client or its agents or used in a manner different from that agreed by the parties; (iv) risks or restrictions known by Client where Client nonetheless elected to proceed; (v) death, personal injury, or product liability (including health and safety) claims or actions arising from the use of Client’s products and services; (vi) the unauthorized or improper use of Materials or the Marks by Client, Client’s designees, licensees, distributors, franchisees or Client Affiliates; (vii) claims brought by Client’s employees for employment discrimination, other employment or labor disputes, breach of contract, personal injury or other civil law matters, or claims brought by those parties with whom Client has a contractual or supplier relationship; (viii) allegations of patent, trademark or trade dress infringement or any other violation of a patent, trademark or trade dress right; (ix) any material breach of the terms of this Agreement by, or any act of omission of, Client or its agents or employees relating to media commitments made by AP pursuant to Client’s approval as provided for herein; and (x) the negligence, gross negligence, bad faith, or intentional or willful misconduct of Client or its employees, agents or Client Affiliates.

- 8.2. AP Indemnity. Excluding claims covered by Section 7, AP shall indemnify, defend, and hold harmless Client, the Client Affiliates, and their respective employees, members, managers, officers, directors, shareholders, and agents (each a “**Client Indemnitee**”) from and against any and all loss incurred by a Client Indemnitee based upon or arising out of any Claim made or brought against Client arising out of the production or dissemination of materials produced by AP hereunder that involve (i) libel, slander, defamation, copyright infringement, right of publicity and/or invasion of right of privacy arising out of work created by AP and in final form (*i.e.*, ready to be disseminated to the public); or (ii) damage to or destruction of personal property, injury to or death of any person directly attributable to or arising out of AP’s negligence or willful misconduct in connection with the performance of the Services hereunder.
- 8.3. Third Party Investigations of Client. In addition, Client shall reimburse AP for all costs and expenses (including reasonable attorneys’ fees and costs) incurred by AP resulting from any third-party investigation of the acts or practices of Client including, without limitation, any costs or expenses related to compliance with any third party subpoena or other discovery request. Should AP be served with a third party subpoena in connection with Services it performed for Client, AP shall promptly advise Client and consult with Client regarding AP’s response to the subpoena to the extent the subpoena seeks Client data, documents, or information pertaining to Client so that Client may have an opportunity to seek appropriate relief.
- 8.4. Notification of Claims. A party entitled to be indemnified pursuant to this Section 8 (the “**Indemnified Party**”) shall provide prompt written notice to the party liable for such indemnification (the “**Indemnifying Party**”) of any claim or demand which the Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement. The Indemnifying Party shall promptly undertake to discharge its obligations hereunder. Additionally, the Indemnifying Party shall employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any such claim or demand at its own expense. The Indemnified Party shall cooperate with the Indemnifying Party in any such defense. In addition, the Indemnified Party shall at all times have the right to fully participate in any settlement which it reasonably believes would have an adverse effect on its business, but the Indemnified Party shall not make any settlement of any Claims that might give rise to liability of the Indemnifying Party without the prior written consent of the Indemnifying Party. The Indemnified Party shall make available to the Indemnifying Party or its agents all records and other materials in the Indemnified Party’s possession reasonably required by it for its use in contesting any third party claim or demand.
- 8.5. **CLIENT LIABILITY. EXCLUDING INDEMNIFICATION OBLIGATIONS OR DAMAGES ARISING FROM BREACH OF A PARTY’S CONFIDENTIALITY OBLIGATIONS, CLIENT SHALL BE LIABLE TO AP, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOST PROFITS (EXCLUDING DIRECT DAMAGES FOR AP’S**

**ANTICIPATED FEES), BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

9. **OWNERSHIP.**

9.1. **Work Product.** All Materials developed or prepared by AP or its employees for Client hereunder that are subject to copyright, trademark, patent, or similar protection shall remain the property of AP and be deemed “**Work Product**”. Client agrees all title and interest to Work Product is not deemed “works made for hire” within the meaning of the United States Copyright Act. Client agrees all right, title and interest therein are hereby irrevocably assigned by Client to AP. Client agrees only AP is allowed to post information and content to any website or social media platform created by AP for Client.

10. **AP MATERIALS.** Notwithstanding any other provision of this Agreement, AP shall retain all right, title and interest in and to, including any intellectual property rights with respect to, any data, designs, processes, specifications, software, applications, source code, object code, utilities, methodologies, know-how, materials, information and skills (and any derivative works, modifications and enhancements thereto) owned, acquired or developed by AP or its licensors, and regardless of whether incorporated in any Work Product.

11. **LEGAL TERMS AND LEGAL VENUE.** This Agreement will be deemed made in and governed by the laws of the State of Texas without application of its principles regarding conflicts of law and the limitation of law provisions herein shall survive the expiration or termination of this Agreement. Any agreements or modifications of this Agreement must be evidenced in writing and signed by both parties. This Agreement shall be construed in accordance with the laws of the state of Texas and venue of any disputes between the parties shall be decided in a court of competent jurisdiction in Harris County, Texas.

12. **NOTICE.** Any notice required to be given by AP to Client under this Agreement shall be sent via registered U.S. Mail to the Client’s address provided herein and/or to the email address(es) provided; any notice required to be given by Client to AP under this Agreement shall be sent via certified mail to APlus Photography, LLC, Attn: Mary Jones, Houston, Texas 77005 with a copy sent to the following email address: info@aplusphotography.com

13. **WAIVER.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any agreement, covenant or condition of this Agreement shall not constitute a waiver with respect thereto or with respect to any subsequent act.

14. **NO THIRD PARTY BENEFICIARIES.** This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise

15. **SUCCESSORS AND ASSIGNS**. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.
16. **ASSIGNMENT**. Except as may be necessary in the rendition of the Services as provided herein, neither AP nor Client may assign any part or all of this Agreement, or subcontract or delegate any of their respective rights or obligations under this Agreement, without the other party's prior written consent. Any attempt to assign, subcontract, or delegate in violation of this paragraph is void in each instance.
17. **SEVERABILITY**. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under any such law, such provision shall be limited to the minimum extent necessary to render the same valid or shall be excised from this Agreement, as the circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited or as if said provision had not been included herein, as the case may be, and enforced to the maximum extent permitted by law, and the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in order that the transactions contemplated by this Agreement can be consummated as contemplated.
18. **FORCE MAJEURE**. Neither Client nor AP shall be liable to the other for any failure, inability, or delay in performing hereunder if caused by any cause beyond the reasonable control of the party so failing, including, without limitation, an Act of God, war, strike, or fire; but due diligence shall be used in curing such cause and in resuming performance.
19. **INDEPENDENT CONTRACTORS; NO PARTNERSHIP OR JOINT VENTURE**. Client and AP agree that AP shall perform its duties under this Agreement as an independent contractor. Furthermore, AP is not a true party of interest of Client, and therefore, limited in its control over Client's business.
20. **SURVIVAL**. Provisions of this Agreement, the performance of which by either or both parties, or by their sense and context, are intended to survive, will survive the completion, expiration, termination or cancellation of this Agreement.
21. **ENTIRE AGREEMENT**. This Agreement and any Addendums attached hereto constitute the entire agreement between AP and Client relating to the subject matter hereof and supersedes any prior agreement or understandings between them.

IN WITNESS WHEREOF, AP and Client have executed this Agreement on the day and date as first appears.

By: \_\_\_\_\_  
Name:  
Title:

APlus Photography, LLC

By: \_\_\_\_\_  
Name: Mary Jones  
Title: Owner



**Addendum A**

**STATEMENT OF WORK (“SOW”)**

APlus Photography, LLC (“AP”), in performance of the foregoing Agreement for Marketing and Brand Development Services will perform the following services to \_\_\_\_\_ (“Client”).

1. **Project Description.** Client wishes to hire AP to provide services. The specific requirements and the details as stated by Client are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. **Schedule.** The Parties agree to the following schedule:

- Website Design Flat Fee: \_\_\_\_\_
- Social Media Creation and Maintenance Recurring Fee:

3 months \_\_\_\_\_ 6 months \_\_\_\_\_  
Other: \_\_\_\_\_

Initial Design Date: \_\_\_\_\_

Client Comment/Approval Date: \_\_\_\_\_

Final Design Date: \_\_\_\_\_

3. **Revisions.** Client shall be entitled to **THREE (3)** revisions. Any revisions beyond shall be chargeable at a rate of **\$75 per hour**.

4. **Payment.** The Parties agree to the following Payment and Payment Terms:

Total Fee for Services: \_\_\_\_\_

Upfront Fee (Due Before Project Start Date): \_\_\_\_\_

Remaining Balance Due: \_\_\_\_\_