



## Master Service Agreement

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CLIENT and Driftpin Studios agree as follows:

1. **Scope of Services.** Driftpin Studios will perform services including, but not limited to the following: marketing consultation, graphic design, copywriting, copyediting, web development, website design, website hosting, videography, still photography, social media or other strategic services. Driftpin Studios scope of service will be defined in the corresponding Statement of Work ("SOW") for each individual project, task or line of service (e.g., hosting services).
2. **Independent Contractor Relationship.** Driftpin Studios relationship with CLIENT will be that of an independent contractor, and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Driftpin Studios (a) is not the agent of CLIENT; (b) is not authorized to make any representation, contract, or commitment on behalf of CLIENT; (c) will not be entitled to any of the benefits that CLIENT makes available to its employees, such as group insurance, profit-sharing or retirement benefits (and waives the right to receive any such benefits); and (d) will be solely responsible for all tax returns and payments required to be filed with or made to any

federal, state, or local tax authority with respect to Driftpin Studios performance of services and receipt of fees under this Agreement. If applicable, CLIENT will report amounts paid to Driftpin Studios by filing Form 1099-MISC with the Internal Revenue Service, as required by law. Driftpin Studios agrees to fill out form W-9 or W8-BEN, as applicable, and as required by CLIENT. Driftpin Studios agrees to accept exclusive liability for complying with all applicable state and federal laws, including laws governing self-employed individuals, if applicable, such as laws related to payment of taxes, social security, disability, and other contributions based on fees paid to Driftpin Studios under this Agreement. CLIENT will not withhold or make payments for social security, unemployment insurance or disability insurance contributions, or obtain workers' compensation insurance on Driftpin Studios behalf. Driftpin Studios hereby agrees to indemnify and defend CLIENT against any and all such taxes or contributions, including penalties and interest. Driftpin Studios agrees to provide proof of payment of appropriate taxes on any fees paid to Driftpin Studios under this Agreement upon reasonable request of CLIENT.

3. **Conflicting Terms.** The SOW is subject to the terms and conditions of this Agreement whether or not referenced in the SOW. If there is any ambiguity or conflict between the terms and conditions of this Agreement and those of the SOW, the terms and conditions of this Agreement shall govern, unless the modified term of the Agreement is specifically referenced and mutually agreed upon in writing under the SOW. Such modification shall be applicable exclusively to the SOW referenced unless this Agreement is amended accordingly.

4. Payment Terms. Driftpin Studios shall be paid according to the payment schedule and terms of the SOW.
5. Performance. Driftpin Studios will perform the services necessary to complete the SOW in a timely and professional manner, consistent with industry standards, at a location, place and time that Driftpin Studios deems appropriate, and all in accordance with this Agreement. The manner and means that Driftpin Studios chooses to complete the SOW are in Driftpin Studios sole discretion and control. In completing the SOW, Driftpin Studios agrees to provide its own equipment, tools, and other materials at its own expense.
  - Observable Performance. The Client may inquire or request proof of service at any time during the execution of the SOW.
  - Client Non-Performance. If the Client is non-responsive during the execution of the SOW, Driftpin Studios may consider certain deliverables fulfilled if a client does not communicate or provide effective feedback within 30 days of Driftpin Studios delivering proof for review. Additionally, if Client exhibits a pattern of not communicating in a timely manner, Driftpin Studios may, at its discretion, charge additional client service fees to bring the account current.
  - Driftpin Studios Non-Performance. If Driftpin Studios is non-responsive during the execution of the SOW, the Client may be eligible for discounts and/or other remediation.
6. Compensation. Driftpin Studios charges for its products and services on an hourly basis or as outlined in the SOW.
  - Sample hourly rates: Graphic Design, Copywriting and Web Development, \$150/hr; Production work/

programming support time, \$95/hr; Hosting, \$199/month; Account management, \$250/month. Rates vary by service type and SOW. Hourly rates are subject to change. Driftpin Studios will notify the client of any changes to the hourly rates a minimum of 30 days before the new rate takes effect. Hourly rates are subject to change. Driftpin Studios will notify the client of any changes to the hourly rates a minimum of 30 days before the new rate takes effect.

- Discounts. Driftpin Studios offers discounts to clients who belong to eligible organizations or associations. Client must show proof of current membership and must retain active membership throughout the duration of the project or business relationship to continue to be eligible for the discount. Driftpin Studios will verify membership at least once a year.
- Deposit. For new Clients (less than 30 days) and for projects over \$1,000, a 50% remittance with net 10 terms is required to begin a project along with a signed SOW. Once the client approves the project, the remaining balance must be paid within 30 business days of project delivery. Final invoice amount may vary due to any shipping costs and/or any taxable items.
- Payment. Acceptable methods of payment are check, money order and cashier's/bank checks made payable to Driftpin Studios. Credit card payments are accepted via Heartland Payment Systems but are subject to a surcharge. There is a \$75.00 charge for any returned items.
- Late fees. Late payments (defined as payments received any time after an invoice's due date) are subject to a 2% or \$25 charge per 30-day period, whichever is greater, until any past due payments are received.

- Collection expenses. Client shall pay all collection or legal fees caused by late payments.
  - Consequences of Non-Payment. Driftpin Studios reserves the right to suspend work and/or withhold deliverables if payments exceed the invoice due date or if the client exhibits a pattern of exceeding invoice due dates, provided Driftpin Studios provides client in writing ten (10) days' notice of any default.
  - Rush fees. Driftpin Studios can accommodate rush requests on projects when applicable and when it is prudent for both Driftpin Studios and the Client. Rush requests are typically subject to a minimum surcharge of 10-20% above the amount quoted but may vary depending on the SOW.
  - Cancellation fees. In the event that any of Driftpin Studios SOWs do not have clauses which govern cancellation, then the following conditions will apply: a) Client must give a minimum of sixty (60) calendar days' notice prior to cancellation date and b) there will be a minimum cancellation fee of \$250.00.
7. Dispute resolution. In the event of a dispute arising from or relating to this Agreement, each Party shall work to negotiate a resolution. If such efforts are not successful within ninety (90) days, or as otherwise agreed by the Parties, the parties shall submit any dispute arising from or related to this Agreement to non-binding mediation in a neutral location mutually agreeable to the Parties. If such mediation is not successful, then the Parties shall submit the dispute to arbitration. The dispute arising in connection with this Agreement, or the breach thereof, shall be finally settled by arbitration in accordance with the rules, in effect at the time of the dispute, of the American Arbitration Association at Orange County California and shall be conducted in the

English language. Unless otherwise agreed to by the parties, a panel of three arbitrators shall conduct the arbitration. Each party shall choose an arbitrator and those two arbitrators shall choose the third arbitrator. The governing law shall be that of the State of California, U.S.A. and the arbitration ruling shall be final, binding and subject to entry and enforcement in the applicable jurisdiction.

8. Termination. Either party may terminate this Agreement with thirty (30) days prior written notice to the other, and neither party shall be liable to the other for any damages or liabilities related to such termination, except for any obligations or liabilities already accrued prior to the termination.

If the Client decides to terminate this agreement and they have an active SOW, then the active SOW would be subject to re-negotiation within ten (10) business days of the cancellation of this agreement. Client acknowledges that additional fees and/or terms may apply to their SOW.

- Termination for Cause. Either party may terminate their agreement at any time, on 30 days prior written notice if the other party breaches any of its material responsibilities or obligations under this Agreement and fails to cure that breach during that 30-day period.
- Termination for Insolvency. Either party may terminate their agreement at any time, on written notice to the other party, if the other party ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it.

- Termination by Mutual Agreement. This agreement may be terminated by the mutual agreement of the parties.
9. Inventions and Intellectual Property Rights. As used in this Agreement, the term “Invention” means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works, and techniques and all Intellectual Property Rights therein. The term “Intellectual Property Rights” means all trade secrets, copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any country.
10. Driftpin Studios Representations and Warranties. Driftpin Studios hereby represents and warrants that (a) the Work Product will be an original work of Driftpin Studios and any third parties will have executed assignment of rights prior to being allowed to participate in the development of the Work Product; (b) the Work Product will fully conform to the requirements and terms set forth in the SOW; (c) neither the Work Product nor any element thereof will infringe or misappropriate the Intellectual Property Rights of any third party; (d) neither the Work Product nor any element thereof will be subject to any restrictions or to any mortgages, liens, pledges, security interests, or encumbrances; (e) Driftpin Studios will not grant, directly or indirectly, any rights or interest whatsoever in the Work Product to third parties; (f) Driftpin Studios has full right and power to enter into and perform this Agreement without the consent of any third party; (g) Driftpin Studios has an unqualified right to grant the license to all Background Technology as set forth in the section titled “License to Background Technology”; and (h) Driftpin Studios will comply with all laws and regulations

applicable to Driftpin Studios obligations under this Agreement.

11. **Ownership of Work Product.** Driftpin Studios reserves all rights of ownership for all the work products it produces. Likewise, Driftpin Studios does not engage in any “work for hire” relationships. If Client requests in writing for a copy of the work product files, Driftpin Studios will, at its discretion, be willing to provide the Client with a digital copy of work product files. This does not, in any sense, transfer ownership of work product to Client.
12. **Insurance.** Driftpin Studios, at its sole cost and expense, will maintain appropriate insurance in accordance with industry standards.
13. **Confidential Information.** Driftpin Studios agrees that during the term of this Agreement and thereafter, except as expressly authorized in writing by CLIENT, it (a) will not use or permit the use of Confidential Information (defined below) in any manner or for any purpose not expressly set forth in this Agreement; (b) will not disclose, lecture upon, publish, or permit others to disclose, lecture upon, or publish any such Confidential Information to any third party without first obtaining CLIENT’s express written consent on a case-by-case basis; (c) will limit access to Confidential Information to Driftpin Studios personnel who need to know such information in connection with their work for CLIENT; and (d) will not remove any tangible embodiment of any Confidential Information from CLIENT’s premises without CLIENT’s prior written consent. “Confidential Information” includes, but is not limited to, all information related to CLIENT’s business and its actual or anticipated research and development, including without limitation (i) trade secrets, inventions,



ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (ii) information regarding products or plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (iii) information regarding the skills and compensation of CLIENT's employees, contractors, and any other Driftpin Studios; (iv) the existence of any business discussions, negotiations, or Agreements between CLIENT and any third party; and (v) all such information related to any third party that is disclosed to CLIENT or to Driftpin Studios during the course of CLIENT's business ("Third Party Information"). Notwithstanding the foregoing, it is understood that Driftpin Studios is free to use information that is generally known in the trade or industry, information that is not gained as a result of a breach of this Agreement, and Driftpin Studios own skill, knowledge, know-how, and experience.

14. Non-Use; Disclosure. Driftpin Studios hereby agrees that Driftpin Studios will not, during Driftpin Studios engagement by Client (the "Service Period") or afterwards, use Confidential Information for Driftpin Studios or for others (other than Client), copy such information or disclose it to any person or entity; provided, that after Driftpin Studios's Service Period terminates, the foregoing restrictions shall not apply to Confidential Information which, at the time of its disclosure by Driftpin Studios, is public knowledge through no action or omission by Driftpin Studios or on Driftpin Studios behalf and which has not been disclosed to the public by any third party in violation of any obligation to maintain its confidentiality. At such time as Driftpin Studios's Service Period terminates, Driftpin Studios agrees to

promptly return to Client at its request, all Confidential Information (and any copies, reproductions, digests, abstracts or the like of such Proprietary Information), including any material stored on computer disks or tapes, in Driftpin Studios's possession or control and to destroy any computer entries or storage files relating thereto.

15. No Assignment. This Agreement, and the party's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by either party without the other's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement will be binding upon assignees.
16. Injunctive Relief. Driftpin Studios acknowledges that, because its services are personal and unique and because Driftpin Studios will have access to Confidential Information of Client, any breach of this Agreement by Driftpin Studios would cause irreparable injury to Client for which monetary damages would not be an adequate remedy and, therefore, will entitle Client to injunctive relief (including specific performance). The rights and remedies provided to each party in this Agreement are cumulative and in addition to any other rights and remedies available to such party at law or in equity.
17. Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
18. Force Majeure. Notwithstanding any other provision of this Agreement, in the event that the performance of any

obligation under this Agreement by either Party is prevented due to acts of God, government restriction, wars, hostilities, blockades, civil disturbances, revolutions, strikes, terrorist attacks, lockouts, or any other cause beyond the reasonable control of a Party, such Party shall not be responsible to the other Party for failure of delay in performance of its obligations under this Agreement. Each Party shall promptly notify of such force majeure condition. The terms of this Clause shall not exempt, but merely suspend, any Party from its duty to perform the obligations under this Agreement until as soon as practicable after a force majeure conditions ceases to exist.

19. **Warranty Disclaimer.** The services provided by Driftpin Studios hereunder are provided "as is," as available, and without any warranties or conditions (express or implied, arising by statute or otherwise in law or from a course of dealing or usage or trade). We make no representations or warranties, of any kind, either express or implied, as to the quality, identity or reliability of any third party, or as to the accuracy of the postings made on the web site by any third party. Some states and jurisdictions do not allow limitations on how long an implied warranty lasts, so some of the above limitations may not apply to you.
20. **Limitation of Liability.** In no event shall either party be liable to the other for any special, indirect, consequential or punitive damages pursuant to this Agreement, including but not limited to, loss of profits, loss of business opportunities or loss of goodwill, even if advised of the possibility of such damages. Notwithstanding any other provision of this Agreement, in no event will Driftpin Studios liability to Client for any action or claim related to the services provided under this Agreement, whether based on contract, tort, negligence

or any other theory of liability, exceed in the greater of: (a) \$100 or (b) the aggregate amount of service charges actually collected by us from you for the services to which the liability relates during the six (6) month period immediately preceding the determination of such liability. Some states and jurisdictions do not allow for the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to Client.

21. Indemnification. You agree to defend, hold harmless and indemnify Driftpin Studios from and against any and all losses, costs, expenses, damages or other liabilities incurred by Driftpin Studios from and against any cost, liability, loss, damage, cause of action, claim, suit, proceeding, demand or action brought by a third party against Driftpin Studios resulting from: (a) any liability arising from the tax treatment of payments or any portion thereof; (b) any grossly negligent or intentional wrongdoing; (c) any act or omission of yours with respect to the payment of fees to any Driftpin Studios; (d) your dispute of or failure to pay any invoice or any other payment; (e) your obligations; (f) infringement upon any intellectual property rights; and/or (g) misappropriation of any trade secrets, of any third party.

Any such indemnification shall be conditioned on our: (a) notifying you in writing of any such claim, demand, action, cost, liability, loss or threat of any thereof; (b) cooperating with you in the defense or settlement thereof; and (c) allowing you to control such defense or settlement. We shall be entitled to participate in such defense through our own counsel at our own cost and expense. We reserve the right to report any wrongdoing of which we become aware to the applicable government agencies or otherwise.

22. Law and Forum for Disputes. The Agreement is governed in all respects by the laws of the State of California without giving effect to any principle that may provide for the application of the law of another jurisdiction. You agree that any claim or dispute you may have against Driftpin Studios must be resolved in accordance with Paragraph 7 above.

23. Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

24. Complete Agreement. This Agreement is intended as the complete, final and exclusive statement of the terms of the Agreement between the Parties regarding the subject matter hereof and supersedes all other prior or contemporaneous Agreements or understandings, whether written or oral, between them relating to the subject matter hereof. No amendment to, or modification of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties. Each Party expressly acknowledges that there are no warranties, representations, covenant or understandings of any kind, manner or description whatsoever by either party to the other except as expressly set forth in this Agreement.

All current clients will receive a minimum thirty (30) day notice in writing of any changes to this Master Service Agreement. Some changes may require written approval. Please [contact us](#) with any questions.

Updated 9/29/2022. For previous versions of our Master Service Agreement, [contact us](#) directly.