

# RETAINER AGREEMENT

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This Retainer Agreement (this "**Agreement**") is entered into as of [EFFECTIVE DATE] (the "**Effective Date**") by and between:

[PROVIDER LEGAL NAME], a [STATE] [ENTITY TYPE, e.g. limited liability company] with its principal place of business at [PROVIDER ADDRESS] ("**Provider**"); and

[CLIENT LEGAL NAME], a [STATE] [ENTITY TYPE] with its principal place of business at [CLIENT ADDRESS] ("**Client**").

Provider and Client are each a "**Party**" and together the "**Parties**."

**Recitals.** Client wishes to engage Provider on an ongoing basis to provide recurring professional services, and Provider wishes to provide those services for a recurring fee, on the terms below. In consideration of the mutual promises below, the Parties agree as follows.

## 1. Retainer Engagement

**1.1 Engagement.** Client engages Provider, and Provider accepts the engagement, to provide the recurring services described in this Agreement (the "**Services**") on a retainer basis during the Term.

**1.2 Description of Services.** During each billing period, Provider will provide the following Services: [DESCRIBE THE RECURRING SERVICES, e.g. ongoing advisory, monthly maintenance, a standing allocation of hours, priority access].

**1.3 Standard of performance.** Provider will perform the Services with reasonable skill and care, in a professional and workmanlike manner, consistent with generally accepted industry standards.

**1.4 Priority and availability.** Provider will use commercially reasonable efforts to make personnel available to Client during normal business hours and to respond to Client requests within [STATE A TARGET RESPONSE TIME, e.g. one business day].

## 2. Retainer Fee and Scope of Hours

**2.1 Retainer fee.** Client will pay Provider a recurring retainer fee of [AMOUNT] per [MONTH / QUARTER] (the "**Retainer Fee**"), in advance, for the Services described in Section 1.2.

**2.2 Included scope.** The Retainer Fee covers up to [NUMBER] hours of Services per billing period, or the scope described in Section 1.2 (the "**Included Scope**"). The Included Scope is a commitment of Provider availability, not a guarantee that all included hours will be used.

**2.3 Rollover.** Unused hours within the Included Scope [DO / DO NOT] roll over to the next billing period. If rollover applies, unused hours expire after [NUMBER] billing periods.

2.4 **Overage.** Services that exceed the Included Scope are billed at **[OVERAGE RATE]** per hour. Provider will notify Client before performing material work that will result in overage and will obtain Client's approval where practical.

2.5 **Out of scope.** Work materially different from the Services described in Section 1.2 is outside this retainer and requires a separate engagement or a written change order.

### 3. Billing and Payment

3.1 **Invoicing.** Provider will invoice the Retainer Fee in advance at the start of each billing period and will invoice any overage in arrears for the prior billing period.

3.2 **Payment terms.** Client will pay each undisputed invoice within **[NUMBER, e.g. 15]** days of the invoice date.

3.3 **Late payment.** Undisputed amounts not paid when due accrue interest at the lesser of **[e.g. 1.5%]** per month or the maximum rate permitted by applicable law, from the due date until paid. Provider may suspend the Services on **[NUMBER]** days' written notice if an undisputed invoice remains unpaid past its due date.

3.4 **Non-refundable.** The Retainer Fee secures Provider's ongoing availability and is non-refundable for any billing period in which Provider stood ready to perform, except as required by applicable law or as the Parties agree in writing.

3.5 **Expenses and taxes.** Client will reimburse reasonable, pre-approved, documented out-of-pocket expenses. Client is responsible for applicable sales, use, and similar taxes, except taxes based on Provider's net income.

### 4. Term and Renewal

4.1 **Initial term.** This Agreement begins on the Effective Date and continues for an initial term of **[NUMBER, e.g. 6]** months (the "Initial Term").

4.2 **Renewal.** After the Initial Term, this Agreement automatically renews for successive **[MONTHLY / e.g. 3-month]** periods unless either Party gives written notice of non-renewal at least **[NUMBER, e.g. 30]** days before the end of the then-current term. The Initial Term and all renewal periods are the "Term."

4.3 **Fee changes on renewal.** Provider may adjust the Retainer Fee for a renewal period by giving Client written notice at least **[NUMBER, e.g. 30]** days before the renewal. If Client does not agree to the new fee, Client may decline renewal by written notice before the renewal date.

### 5. Termination

5.1 **Termination for convenience.** Either Party may terminate this Agreement for convenience on **[NUMBER, e.g. 30]** days' prior written notice.

5.2 **Termination for cause.** Either Party may terminate immediately on written notice if the other Party materially breaches and fails to cure within **[NUMBER, e.g. 10]** days after written notice describing the breach.

5.3 **Effect of termination.** On termination, Client will pay for all Services performed and expenses incurred through the effective date of termination, including any overage. Provider will deliver work product for which Client has paid. The Retainer Fee for the then-current billing period is handled as provided in Section 3.4.

### 6. Confidentiality

6.1 **Definition.** "Confidential Information" means non-public information one Party discloses to the other, or that a Party learns in connection with the Services, that is marked confidential or that a reasonable person would

understand to be confidential given its nature and the circumstances.

**6.2 Obligations.** Each Party will use the other's Confidential Information only to perform under this Agreement, protect it with at least reasonable care, and disclose it only to personnel and advisors who need it and are bound by confidentiality obligations at least as protective as these.

**6.3 Exclusions and return.** Confidentiality obligations do not apply to information that is public, was rightfully known before disclosure, is rightfully obtained from a third party, or is independently developed. On request or termination, each Party will return or destroy the other's Confidential Information, except copies retained in routine backups or as required by law.

## 7. Ownership of Work Product

**7.1 Work product.** Subject to Client's full payment of amounts due, Provider assigns to Client all right, title, and interest in the deliverables and work product Provider creates specifically for Client under this Agreement (the "**Work Product**"), excluding Provider's pre-existing materials and tools.

**7.2 Provider tools.** Provider retains ownership of its methodologies, know-how, templates, and general-purpose tools. To the extent any are embedded in the Work Product, Provider grants Client a non-exclusive, perpetual, worldwide, royalty-free license to use them as part of the Work Product.

## 8. General Provisions

**8.1 Independent contractors.** The Parties are independent contractors. Nothing creates a partnership, joint venture, agency, or employment relationship.

**8.2 Limitation of liability.** Except for breaches of confidentiality and a Party's gross negligence or willful misconduct, neither Party is liable for indirect, incidental, special, or consequential damages, and each Party's total aggregate liability under this Agreement will not exceed the total fees paid or payable in the **[NUMBER, e.g. 3]** billing periods before the event giving rise to the liability.

**8.3 Governing law and venue.** This Agreement is governed by the laws of the State of **[STATE]**, without regard to its conflict-of-laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts located in **[COUNTY, STATE]**.

**8.4 Assignment and notices.** Neither Party may assign this Agreement without the other's prior written consent, except to a successor in connection with a merger or sale of substantially all assets. Notices must be in writing, sent to the addresses above (or as updated in writing), and are effective on receipt.

**8.5 Entire agreement; amendment.** This Agreement is the entire agreement between the Parties on its subject and supersedes prior discussions. It may be amended only by a writing signed by both Parties.

**8.6 Severability, waiver, and counterparts.** If any provision is unenforceable, the rest remains in effect. A Party's failure to enforce a provision is not a waiver. This Agreement may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**PROVIDER**

**CLIENT**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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Printed name: **[NAME]**

Printed name: **[NAME]**

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Title: **[TITLE]**

Title: **[TITLE]**

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Date: \_\_\_\_\_

Date: \_\_\_\_\_

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