

Retainer Agreement

By signing this Agreement, _____ (“Client”) has retained Stuart C. Lathrop (“Service Provider”) to proceed with the requested services, and agrees to the terms and conditions as set forth in this Agreement:

1. **SERVICES.** Client has retained Service Provider to provide computer technology development and support services for the sole benefit of Client, Client's employees or contract personnel. Services cannot be resold by Client without Service Provider's prior written permission which may, at Service Provider's sole discretion, require additional agreement or terms.
2. **PAYMENT.** Client agrees to commit to retain and remunerate Service Provider as detailed herein and under then prevailing fee schedule (retainer fee in full must accompany signed Agreement):
See the attached Schedule of Fees
3. **HOURLY PAY BASIS.** Hours will be applied against deposit until expended. Subsequently, Client will be billed on a weekly basis for each prior week's hours. Payments are due upon receipt.
RETAINERS. Monthly retainers provide ongoing support at a discounted rate up to the number of hours set forth in this Agreement. Retainer fees are required in full in advance of services; payment is due on or before 1st of each month. If payment is not received by the 1st, full standard hourly rates will apply for any work performed during that month in excess of Client's carry forward balance, and monies received will be applied accordingly. Services rendered beyond the retained number of hours will be billed at the discounted hourly rate with payment due upon receipt. Hours are billed in 15 (fifteen) minute increments. Payments rendered are considered fully earned and non-refundable. Unused hours are carried over for up to 90-days. If account remains idle and unused for any period exceeding 90 days Service Provider reserves the right to expire this Agreement and Client forfeits to Service Provider any remaining balance.
4. **SERVICE CATEGORIES.** There may be a per-hour minimums for services and, unless stated by Service Provider otherwise, all hourly rates are billed in 15 (fifteen) minute increments. Client understands that hourly rates are subject to change without notice at the sole discretion of Service Provider.
5. **CLIENT RESPONSIBILITIES.** Client understands that Service Provider is not an employee, and that this will be a collaborative, professional relationship of equals where mutual professional respect, courtesy and consideration are expected. Due to the virtual nature of the relationship, Client understands the importance of communication, especially via email, and agrees to respond to questions, requests and communications from Service Provider in a timely manner. Client understands that Service Provider is a business with other clients to serve, and requires fair, realistic notice in order to attend to requests and projects. Poor planning or miscommunication on the part of the Client will not constitute an emergency for Service Provider. Client understands that Service Provider may require detailed clarification of projects in order to meet expectations and provide the best support and highest quality work.
6. **OFFICE HOURS & COMMUNICATION.** Office hours are Monday through Friday 8:00 am to 5:00pm (EST). Email is to be the primary form of communication between Client and Service Provider. Service Provider is available for phone calls during office hours only unless prior arrangements have been made with and agreed to by Service Provider. Occasional calls of only a few minutes in duration are not typically billed to Client. However, the time of both parties must be respected, and calls lasting over 10 minutes will be billed to Client. Telephone meetings must be scheduled. Cancellation requires a minimum of 24 hours advance notice. Missed meetings or cancellations without notice will be billed to Client.

7. **INDEPENDENT CONTRACTOR STATUS.** Service Provider is an independent contractor, not Client's employee. Neither are Service Provider's employees or contract personnel Client's employees. Service Provider and Client agree to the following rights consistent with an independent contractor relationship:
 - a. Service Provider has the right to perform services for others during the term of this Agreement.
 - b. Service Provider has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
 - c. Service Provider has the right to perform the services required by this Agreement at any place, location or time.
 - d. Service Provider will furnish all equipment and materials used to provide the services required by this Agreement.
 - e. Service Provider has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
 - f. The Service Provider or Service Provider's employees or contract personnel shall perform the services required by this Agreement; Client shall not hire, supervise or pay any assistants to help Service Provider.
 - g. Neither Service Provider nor Service Provider's employees or contract personnel shall receive any training from Client in the skills necessary to perform the services required by this Agreement unless such are uniquely related to Client's business and said training is necessary for Service Provider to fulfill Agreement.
 - h. Client shall not require Service Provider or Service Provider's employees or contract personnel to devote full time solely to performing the services required by this Agreement.
8. **INTELLECTUAL PROPERTY OWNERSHIP.** To the extent that the work performed by Service Provider under this Agreement (Service Provider's Work) includes any work of authorship entitled to protection under the copyright laws, the parties agree to the following provisions:
 - a. Service Provider's Work has been specially ordered and commissioned by Client as a contribution to a collective work, a supplementary work or other category of work eligible to be treated as a work made for hire under the United States Copyright Act.
 - b. Service Provider's Work shall be deemed a commissioned work and a work made for hire to the greatest extent permitted by law.
 - c. Client shall be acknowledged as the sole author of Service Provider's Work and any work embodying the Service Provider's Work according to the United States Copyright Act.
 - d. To the extent that Service Provider's Work is not properly characterized as a work made for hire, Service Provider grants to Client all right, title and interest in Service Provider's Work, including all copyright rights, in perpetuity and throughout the known universe.
 - e. Service Provider shall help prepare any papers Client considers necessary to secure any copyrights, patents, trademarks or intellectual property rights at no charge to Client. However, Client shall reimburse Service Provider for reasonable out-of-pocket expenses incurred by Service Provider.
 - f. Service Provider agrees to require any employees or contract personnel Service Provider uses to perform services under this Agreement to assign in writing to Service Provider all copyright and other intellectual property rights they may have in their work product. Service Provider shall provide Client with a signed copy of each such assignment.

- g. Service Provider agrees not to use any of the intellectual property mentioned above for the benefit of any other party including Service Provider without Client's prior written permission.
9. CONFIDENTIALITY. Service Provider will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of Client without Client's prior written permission except to the extent necessary to perform services on Client's behalf. Proprietary or confidential information includes:
- a. the written, printed, graphic or electronically recorded materials furnished by Client for Service Provider to use
 - b. business plans, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind, and
 - c. information belonging to customers and suppliers of Client about whom Service Provider gained knowledge as a result of Service Provider's services to Client.

Service Provider shall not be restricted in using any material which is publicly available, already in Service Provider's possession or known to Service Provider without restriction, or which is rightfully obtained by Service Provider from sources other than Client. Upon termination of Service Provider's services to Client, or at Client's request, Service Provider shall deliver to Client all materials in Service Provider's possession relating to Client's business.

10. NON-SOLICITATION. For a period of three years after termination of this Agreement, Service Provider agrees not to call on, solicit or take away Client's customers or potential customers of which Service Provider became aware as a result of Service Provider's services for Client. In turn, Client agrees not to call on, solicit or take away Service Provider's employees, customers or those potential employees or customers of which Service Provider became aware as a result of Service Provider's services for Client.
11. STATE AND FEDERAL TAXES. Client will not withhold any Social Security and Medicare taxes or make payments on Service Provider's behalf, make state or federal unemployment compensation contributions on Service Provider's behalf, or withhold state or federal income tax from Service Provider's payments. Service Provider shall be responsible for the payment of all taxes incurred while performing services under this Agreement including all applicable income taxes and, if Service Provider is not a corporation, self-employment (Social Security) taxes. Upon demand, Service Provider shall provide Client with proof that such payments have been made.
12. FRINGE BENEFITS. Service Provider understands that neither Service Provider nor Service Provider's employees or contract personnel are eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of Client.
13. WORKERS' COMPENSATION. Client shall not obtain workers' compensation insurance on behalf of Service Provider or Service Provider's employees. If Service Provider hires employees to perform any work under this Agreement, Service Provider will cover them with workers' compensation insurance and provide Client with a certificate of workers' compensation insurance before the employees begin the work, if requested.
14. UNEMPLOYMENT COMPENSATION. Client shall make no state or federal unemployment compensation payments on behalf of Service Provider or Service Provider's employees or contract personnel. Service Provider will not be entitled to these benefits in connection with work performed under this Agreement.
15. INSURANCE. Client shall not provide any insurance coverage of any kind for Service Provider or Service Provider's employees or contract personnel.

16. **PROJECTS COMPLETION.** Basic support receives 24-48 hours attention. Each new or special project requires a minimum three (3) days lead time. Client will provide sufficient notice and allow for reasonable time frames for project completions. Rush projects and projects requiring weekend or holiday work may be subject to a 25% surcharge and/or other rush fees. Service Provider reserves the right to refuse any project or service request for any reason whatsoever.
17. **MATERIALS & INFORMATION.** Client will provide all content, outlines, photos, project images, etc., necessary for any special projects. Source material must be clear and legible. Client is responsible for furnishing all pertinent information, and for furnishing accurate, truthful and complete information necessary for Service Provider to perform or complete the agreed services or project.
18. **EXPENSES.** Expenses incurred on behalf of Client are not included in any fees and will be billed to Client. Reimbursable expenses may include, but are not limited to, office supplies (e.g., file folders, envelopes, CDs, labels, etc.), mileage, long-distance telephone charges, payments made to vendors, and shipping and handling costs. Long-distance telephone calls will be billed at a rate of \$0.25 per minute. There is a one-hour minimum for office calls. On-site visits will be billed for meeting time, round-trip travel time and mileage at the prevailing Internal Revenue Service Standard Mileage Rate. Payment is due upon receipt.
19. **DELIVERY.** Completed projects are delivered via CD, fax, email, FTP, U.S. Mail, or other means as required by the Client. Client is responsible and will be billed for all shipping and handling costs. There is no charge for faxing, emailing or U.S. mail under 1 ounce (#10 envelope and one stamp).
20. **ACCURACY.** Client assumes full responsibility for acceptance of work or services performed and agreed upon, as well as final proofing and accuracy. Service Provider is not responsible for errors or omissions after Client acceptance.
21. **PAYMENT OPTIONS.** Personal or business checks are accepted for payment. AMEX, Discover, MasterCard and VISA credit cards and e-checks are accepted through Intuit Payment Networks, PayPal, or any other online payment vendor that Service Provider may choose to utilize.
22. **NSF FEES.** There is a \$40 NSF (insufficient funds) fee for returned checks.
23. **LATE PAYMENTS.** Payments not received by due date will result in work cessation. Service Provider reserves the right to refuse completion or delivery of work until past due balances are paid. Monthly late charges of \$10.00 or 1.75% (APR of 21%), whichever is greater, will be assessed on unpaid balances every 30 (thirty) days.
24. **LIEN.** All materials or property belonging to Client, as well as work performed, may be retained as security until all just claims against Client are satisfied.
25. **LATE FEES.** Clients who consistently fail to respond to questions in a timely manner, do not supply needed information, or otherwise impair efficient work-flow increase administrative time, waste retainer hours unnecessarily, and prevent Service Provider from working to optimum standards and servicing other clients in a fair and equal manner. Service Provider reserves the right to impose late fees and/or increase hourly rates of Clients who fall into this category.
26. **PROPERTY.** All billings (including invoices, statements and estimates), reports and time accounting are provided as a convenience to Client at the discretion of Service Provider and remain the property of Service Provider. Periodic audits may reveal previous billing discrepancies or errors, and Service Provider is entitled to void or recall incorrect invoices and statements and bill for any monies due on account.
27. **ACCURACY OF INFORMATION.** Client agrees that the accuracy of information supplied to Service Provider is the sole responsibility of Client, and that Service Provider is not responsible and shall

not be held liable for the results of services performed on the basis of inaccurate, incomplete or untruthful information furnished by Client.

28. INDEMNIFICATION/RELEASE OF LIABILITY. Client shall indemnify, defend and save Service Provider harmless from any and all suits, costs, damages or proceedings, including, but not limited to, Service Provider's services, pertaining to any and all litigation in which the Client is a party. Client shall pay all expenses incurred by Service Provider including, but not limited to, all attorneys' fees, costs and expenses incurred should Service Provider be named a party in any litigation to which Client is a party. Client shall further indemnify and hold harmless Service Provider and its agents, officers and directors from liability for any and all claims, costs, suits and damages, including attorneys' fees arising directly or indirectly out of or in connection with the operation of Client, and from liability for injuries suffered by any person relating to the Client. This agreement to indemnify Service Provider is not limited to any acts or omissions, statements or representations made by Service Provider in the performance and/or nonperformance of Service Provider's duties hereunder and relating to all contractual liabilities, which may be alleged or imposed against Service Provider. All reasonable precautions will be taken to safeguard the property entrusted to Service Provider. In the absence of negligence, however, Service Provider will not be held liable for loss, destruction or damage of any kind resulting from items which are lost or delayed in transit, whether such transit is electronic, fax, mail or otherwise, nor for unauthorized use by others of such property. Service Provider will not be held liable for any incidental, consequential or indirect damages, including without limitation damages for loss of profits, business interruption, loss of information, plagiarism, etc. Service Provider will not be held liable for typographical omissions or errors.
29. TERMINATION. Retainers may be terminated by either party for any reason with 10 (ten) days advance written notice of intent to cancel. Retainer fees are due in full for the intended month of cancellation if proper notice is not provided.
30. EXPIRATION & MODIFICATION. This Agreement shall remain in effect until such time as one or the other Party provides written notice of cancellation. This Agreement may be modified or amended as necessary after negotiations initiated by either Party. If agreement is reached, only a written instrument signed by both Parties will modify or amend this Agreement.
31. FORCE MAJEURE. A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockade, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. No party is entitled to terminate this Agreement under Clause 30 (Termination) in such circumstances. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in Clause 32 (Force Majeure).
32. ADDITIONAL PROVISIONS. This Agreement shall be governed by and construed according to the laws of the State of South Carolina, and shall not be construed against the drafter. The parties agree that any suit or action relating to this Agreement shall be instituted and commenced exclusively in the federal or state courts in Beaufort, South Carolina, and the parties hereby waive the right to change such venue and hereby consent to the jurisdiction of such courts. Any liability on the part of Service Provider as determined by a court of law will be limited to an

amount not to exceed one month's retainer. If Service Provider must bring suit or other action to collect on unpaid invoices or seek remedy of any other breach of contract, Service Provider shall be entitled to an award of costs, reasonable attorney's fees and interest at the maximum rate permitted by law in addition to any other relief awarded.

33. ENTIRE AGREEMENT. This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent, by affixing their hands and seals hereto, that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Agreement.

The terms and conditions of this Agreement may be modified or amended as necessary only by written instrument signed by both parties. By signing this Retainer Agreement, I indicate that I am authorized to bind Client, and also that I understand, agree to and accept the terms and conditions as contained herein, dated this _____ day of _____, _____.

CLIENT:

SERVICE PROVIDER:

Authorized Signature

Printed Name

Title

Business/Company Name

Address

City, State, Zip

Phone (mark if Cell Phone)

Fax

Email

Website

EIN, UBI or SSN

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MAKE CHECKS PAYABLE TO:
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