GRAPHIC DESIGN AGREEMENT

This Graphic Design Agreement ("Agreement"), is made effective as of _____, 2019 by and between **[CLIENT NAME]** ("Client"), having an address at **[CLIENT ADDRESS]** and **[DESIGN COMPANY NAME]** ("Designer") having an address at **[DESIGN COMPANY ADDRESS]**, (collectively "Parties").

1. **Scope.** This Agreement sets forth the terms and conditions whereby Designer agrees to produce certain Works (as described below) for Client. Designer will be engaged solely and exclusively for the limited purpose of providing these Works to the Client. Neither party is, by virtue of this Agreement, authorized as an agent, employee, or legal representative of the other. Except as specifically set forth herein, neither party shall have the power to control the activities and operations of the other and its status at all times will continue to be that of an independent contractor relationship.

2. **Description of Services and Warranties**. The Client hereby engages the Designer, and the Designer accepts such engagement to provide the following Works for the Client (hereinafter, the "Works"): **[DETAIL DESCRIPTION OF WORK TO BE PREPARED]**. Designer represents and warrants that Designer has the knowledge, skills, and experience necessary to produce the Works. Designer agrees that the Works will be original. Designer also guarantees that the final Works will be free from any plagiarism or likeness to a Works not belonging to or created by Designer. The Works will become the intellectual property of Client, free and clear, as a work made-for-hire. The deadline for the completed Works to be delivered to the Client is as follows: **[DEADLINE FOR DELIVERY WORK]**. The Client agrees not to alter the Works unless the alterations are agreed upon by both parties in writing and notated within or upon this Agreement. Designer may be engaged or employed in any other business, trade, profession, or other activity which does not place Designer in a conflict of interest with the Client, provided, that, during the term, Designer shall not be engaged in any business activities that compete with the business of the Client without the Client's prior written consent.

3. **Fees and Expenses.**
    a. Client will be billed through an invoicing system monthly in the amount of **[$___]** per hour**.**
    b. Designer may only spend a maximum amount of **[____]** hours on Client's Works per week.
    c. Payment will be made within **[____]** days after receipt of the invoice. A late fee of **[$____]** shall be applied to invoices unpaid beyond day **[____]** after receipt of the invoice.
    d. The Works will begin at the execution of this Agreement as well as when Designer receives a retainer in the amount of [$_____]. Billing will be assessed against the retainer until it has been used up.
    e. Designer's fees include [_____] rounds of edits of Client Work. These edits include the following components.
    f. If Designer does not hear from Client within [_____] days after delivery of the Works, the Works shall be considered accepted with no further changes permitted.

g. If the Client wishes to alter the Works beyond the initial description of the Works listed and beyond the included edits, Designer will still be owed all fees invoiced before any additional edits are made. Designer shall then invoice for additional edits, which will be determined at the time the edits are discussed.

h. The Client agrees to reimburse pre-approved expenses and costs as indicated on invoices. Such expenses and costs shall be accompanied by receipts and reasonable supporting documentation. The Parties will agree on the expenses prior to the expenses being incurred.

4. **Taxes**. Designer herein acknowledges that they will receive an IRS Form 1099-MISC from the Client. Designer and Client shall each be solely responsible for all of the federal, state, and local taxes applicable to them.

5. **Deliverable and Milestones**. All Works are to be completed and wrapped up by [**FINAL WORK DELIVERY DATE**]. Designer agrees to the following milestones:

a. [MILESTONE A]
b. [MILESTONE B]
c. [MILESTONE C]

6. **Limitation of Purpose**. Client agrees that Client may only use the Works created by Designer for the limited purposes outlined by this Agreement. Specifically, the Works may be used for the following purposes:

a. **[LIMITATION ON CLIENTS USE OF WORKS]**
b. **[LIMITATION ON CLIENTS USE OF WORKS]**
c. Should Client use the Works for any other purpose, Designer is free to pursue all remedies available under the law, including an action for intellectual property infringement.

7. **Nonexclusivity**. Client and Designer hereby acknowledge and agree that nothing contained herein is to establish an exclusive relationship between the Parties. Designer shall be free to continue working for and taking on new clients, without regard to Client. Designer does not need Client approval for any such work.

8. **Client's Legal Requirements**. It is the Client's sole and exclusive responsibility to ensure that all legal requirements for Client's business are met. Such legal requirements include, but are not limited to, ensuring claims on advertising and graphics are true, accurate, and may be legally stated, as well as ensuring all products are lawful. Designer shall not be responsible for any legal, technical, or regulatory specifications.

9. **Termination**. The Parties may terminate this Agreement prior to the specified end date by giving notice in writing. Notice shall be given at least 30 days prior to a termination date stated in the written notice**.** This Agreement may be immediately terminated in the event that there is a breach of the terms by either Party. However, if Client finds the Works unsatisfactory, Designer shall have [_____] to cure the Works. This agreement will also immediately terminate upon the death of the Designer or Client, the inability of the Designer to perform the services because of a

sudden and medically documented physical or mental disability, the liquidation, dissolution or discontinuance of the business of the Client or Designer in any manner, or the filing of any petition by or against the Client or Designer under federal or state bankruptcy or insolvency laws. Upon termination, all fees and reimbursements shall be paid and provided to the Designer as they have accrued up to the date of termination. Upon expiration or termination of this agreement, or at any other time upon the Client's written request, Designer shall promptly after such expiration or termination:

    a. Deliver to the Client all deliverables (whether complete or incomplete) and all hardware, software, tools, equipment, or other materials provided for Designer's use by the Client;

    b. Deliver to the Client all tangible documents and materials (and any copies) containing, reflecting, incorporating, or based on the Client's confidential or proprietary information, as discussed further elsewhere in this Agreement;

    c. Permanently erase all of the confidential or proprietary information from any of the Designer's computer systems; and

    d. Certify in writing to the Client that Designer has complied with the requirements of this clause.

10. **<u>Confidential or Proprietary Information</u>**. Designer hereby acknowledges and agrees that Designer may receive confidential and/or proprietary information relating to Client's business. Such information may include, but will not be limited to, client lists, client notes, specifications, project information, plans, and/or technological resources. The confidential and/or proprietary information is significantly important to Client's business and it has been developed or obtained over time, with significant resources involved. Designer understands and agrees that any unintended disclosure of any of the confidential and/or proprietary information would be significantly detrimental to Client. As such, Designer agrees that they shall:

    a. Not disclose the confidential and/or proprietary information by any means not authorized by the Client to any third parties;

    b. Not copy or duplicate the confidential and/or proprietary information unless specifically directed to do so by the Client;

    c. Not disclose the confidential and/or proprietary information by any unauthorized means to any third parties for a period of at least one year following the termination of this agreement;

    d. Not use the confidential and/or proprietary information for any purpose except those expressly authorized by the Client;

    e. Inform Client immediately if Designer becomes aware of any unauthorized use or disclosure of the confidential and/or proprietary information.

11. **<u>Intellectual Property</u>**. Designer agrees that all inventions, trade secrets, confidential and/or proprietary information, and work-product conceived, created or developed by Designer which are a used for the limited purposes outlined by this Agreement, b related to the Client's actual business or research and development, or c developed, made, or discovered by Designer in the course of the performance of Designer's duties for the Client, i.e., all of the Works created, shall be the property of the Client. Designer hereby assigns to the Client the entire right, title, and interest in and to the Works only for the limited purposes as outlined elsewhere in this

Agreement, including all necessary copyrights, patents, trademarks, or other intellectual property rights relating to all Works.

12. **Portfolio Use**. Notwithstanding the foregoing, Designer shall be permitted to use all Works in Designer's professional portfolio, after such Works have been made public by the Client. Nothing contained herein shall limit Designer's such right.

13. **Credit.** Client shall credit Designer's names on Works created hereunder in a manner agreed to by the Parties in writing prior to the release of the Works to the public.

14. **Indemnification**. Designer and Client shall each defend, indemnify, and hold the other harmless (including all affiliates, officers, directors, employees, agents, successors, and assigns) from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorneys' fees) arising out of or resulting from bodily injury, death of any person, damage, real or intangible, to personal property resulting from the other's acts or omissions or the breach of any representation, warranty, or obligation under this Agreement.

15. **Survival.** Any provision of this Agreement which by its terms imposes continuing obligations on either of the Parties shall survive termination of this Agreement.

16. **Dispute Resolution**. In case of a dispute between the Parties relating to or arising out of this Agreement, the Parties shall first attempt to resolve the dispute personally and in good faith. If these personal resolution attempts fail, the Parties shall then submit the dispute to binding arbitration. The arbitration shall be conducted in the county and state noted in the GOVERNING LAW provision of this Agreement. The arbitration shall be conducted by a single arbitrator, and such arbitrator shall have no authority to add Parties, vary the provisions of this Agreement, award punitive damages, or certify a class. The arbitrator shall be bound by applicable and governing federal law as well as the law of Ohio. Each Party shall pay their own costs and fees. Claims necessitating arbitration under this section include, but are not limited to: contract claims, tort claims, claims based on federal and state law, and claims based on local laws, ordinances, statutes or regulations. Intellectual property claims by Designer will not be subject to arbitration and may, as an exception to this sub-part, be litigated. The Parties, in agreement with this sub-part of this Agreement, waive any rights they may have to a jury trial in regard to arbitral claims.

17. **Governing Law**. This Agreement shall be governed by and construed in accordance with the internal laws of [STATE] without giving effect to any choice or conflict of law provision or rule. Each party irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts located in [COUNTY NAME] county in any legal suit, action, or proceeding arising out of or based upon this Agreement or the Works provided hereunder.

18. **Benefit.** This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, and to their respective heirs, representatives, successors, and assigns.

19. **Counterparts.** This Agreement may be executed in counterparts, all of which shall constitute a single agreement. The Agreement shall be effective as of the date set forth above.

20. **Notices**. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement. All notices shall be delivered by email or at the address which the parties may designate to each other through personal delivery, nationally recognized overnight courier (with all fees prepaid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if (a) the receiving party has received the Notice and (b) the party giving the Notice has complied with the requirements of this Section.

21. **Force Majeure**. Designer is not liable for any failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of military authorities, riots, embargoes, acts of nature and natural disasters, and other acts which may be due to unforeseen circumstances.

22. **Headings.** Headings to this Agreement are for convenience only. Headings shall in no way affect the provisions themselves and shall not be construed in any way that would limit or otherwise affect the terms of this Agreement.

23. **Entire Agreement; Modification**. The agreement embodies the entire agreement between the Client and Designer relating to the subject matter hereof. This Agreement may be changed, modified or discharged only if agreed to in writing by both parties.

IN WITNESS WHEREOF, the Parties execute this Agreement as of the date first above written.

CLIENT: **DESIGNER:**

_____   _____
[CLIENT SIGNATURE]   [DESIGNER SIGNATURE]