

ADVERTISING AGENCY SERVICES AGREEMENT

THIS ADVERTISING AGENCY SERVICES AGREEMENT (“**Agreement**”) made effective as of the 1st day of January, 2018 (“**Effective Date**”), by and between Adcetera Design Studio, Inc. (“**Agency**”), and The Woodlands Convention & Visitors Bureau, a Texas non-profit corporation (“**TWCVB**”) (Agency and TWCVB are each a “**Party**” and are collectively referred to as the “**Parties**”).

RECITALS

WHEREAS, the Parties desire to enter into a service agreement whereby Agency shall be retained to provide advertising and marketing services on behalf of TWCVB.

NOW, THEREFORE, for and in consideration of the mutual covenants, benefits and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties contract and agree as follows:

TERMS

ARTICLE I: ENGAGEMENT OF AGENCY

1.1 Agency Obligations: TWCVB hereby engages Agency, and Agency hereby agrees to serve as TWCVB’s advertising agency of record for the preparation and placing of advertising and marketing communications and materials pursuant to TWCVB’s Destination Marketing campaign. Agency is hereby authorized to purchase media and outside creative work on TWCVB’s behalf as TWCVB’s agent, pending TWCVB’s approval of such purchases. Agency shall devote its best efforts to further TWCVB’s interests and endeavor to make its marketing plan successful. Agency shall supervise all media, environmental graphic design, packaging, collateral, and promotional materials for appearance, accuracy, timeliness, position, size, and mechanical reproduction. Agency shall credit and pay all bills incurred on behalf of the TWCVB’s account, and shall make no commitments or disbursements or incur obligations for TWCVB’s account without authorization or approval from TWCVB.

1.2 Non-Exclusivity: The Parties acknowledge and agree that the services provided hereunder are provided on a non-exclusive basis, and nothing herein shall be construed as prohibiting TWCVB or Agency from engaging similar services with third parties during the Term of this Agreement.

1.3 Intellectual Property: The Parties agree that upon final payment for services rendered, any and all final products developed and delivered by Agency to TWCVB pursuant to this Agreement shall be deemed a work for hire and shall become the property of TWCVB, and TWCVB shall own and have all rights, title and interest, including, but not limited to copyright, to any such products; provided, however, that such products may be subject to ongoing license fees, usage fees, renewal fees, and/or other third-party ownership considerations by which such products do not convey complete ownership to TWCVB, and which Agency shall provide notice thereof.

To the extent necessary, and subject to any third-party considerations as noted above, Agency agrees to develop and execute any documents, give all oaths or testimony, and otherwise give all assistance deemed by TWCVB to be necessary or desirable to secure, maintain, or defend TWCVB's ownership of such intellectual property products.

1.4 Agency's Representations and Warranties. Agency represents and warrants to TWCVB that: i) it has the right and capacity to enter into this Agreement and fully perform all of its obligations hereunder; ii) it shall use all commercially reasonable efforts to perform the services and obligations hereunder in a good and workmanlike manner; iii) that the services and obligations hereunder produced by Agency are wholly original to Agency, or Agency has acquired the necessary rights from third parties to contribute and include the same, and that the services and obligations provided will not violate or infringe upon any other party's copyright, patent, trademark or other intellectual property right; and iv) that all obligations produced shall be fit for their intended purpose and of industry standard quality and workmanship.

ARTICLE II: CONFIDENTIALITY

Agency shall not, without TWCVB's prior written authorization, reveal or make available any confidential information or trade secrets regarding TWCVB's products, business, customers, or methods of operation learned by Agency during the term of this Agreement.

ARTICLE III: PAYMENT

3.1 Service Fees and Media Purchases: All services provided by Agency shall be billed according to Agency's Standard Operating Procedures, specified in Exhibit "B," and hourly quotes, which shall be submitted in writing and approved by TWCVB prior to any charges being incurred. Such quote estimates detail all production costs and reflect a plus or minus ten percent (10%) contingency factor in addition to any specifically stated contingency. If changes and/or additional unforeseen services/costs are necessary to complete a job, a change order will be issued to TWCVB for review and approval. On all media purchased by Agency, Agency shall bill TWCVB at the published card rates after negotiation, in addition to a 10% agency commission on advertising placed up to \$1,000,000.

3.2 **Payment: Payments will be made by TWCVB on all uncontested amounts within thirty (30) calendar days after receipt of invoice based on TWCVB's accounts payable calendar.**

3.3 Invoices: All invoices shall be prepared by Agency according to the quotes submitted to and agreed upon by TWCVB. Invoices shall indicate in sufficient detail the type of services provided, time and date of the services, and the name of the project the services were provided in connection with. As acting agent for TWCVB, Agency will prepare and deliver media invoices to TWCVB upon approval of the contractual obligation of the insertion order, which will be no less than 30 days and no more than 45 days in advance of media run date. Agency agrees that following reasonable prior notice, any and all contracts, agreements, correspondences, books, accounts, and other information relating to TWCVB's business or this Agreement shall be

available for inspection by TWCVB and TWCVB's outside representatives pursuant to any contested invoice amounts.

ARTICLE IV: INDEMNIFICATION

AGENCY AND ITS AGENTS, CONTRACTORS, EMPLOYEES, SUCCESSORS AND ASSIGNS, HEREBY ASSUME RESPONSIBILITY FOR, AND AGREE TO INDEMNIFY, HOLD HARMLESS, PROTECT AND DEFEND TWCVB AND ITS RESPECTIVE DIRECTORS, OFFICERS, AGENTS, ATTORNEYS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, REASONABLE ATTORNEYS' FEES AND COURT COSTS, OUT-OF-POCKET EXPENSES, DAMAGES (INCLUDING COMPENSATORY AND PUNITIVE DAMAGES) AND LIABILITIES, ARISING FROM OR RELATING TO ANY ITEM PREPARED BY AGENCY OR AT AGENCY'S DIRECTION, INCLUDING, BUT NOT LIMITED TO, CLAIMS OF LIBEL, SLANDER, PIRACY, PLAGIARISM, INVASION OF PRIVACY, OR INFRINGEMENT OF COPYRIGHT OR ANY OTHER INTELLECTUAL PROPERTY INTEREST ARISING OUT OF THE SERVICES PROVIDED BY AGENCY OR FROM AGENCY'S OBLIGATIONS UNDER THIS AGREEMENT. THIS INDEMNIFICATION PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

ARTICLE V: INSURANCE

Agency shall obtain and maintain during the term of this Agreement commercial general liability, worker's compensation, and public liability insurance coverages in accordance with the requirements specified in Exhibit "A", attached hereto and incorporated by reference. Agency shall provide to TWCVB a copy of the declarations page from all such policies required under this Agreement or other certificate of insurance within thirty (30) days of the Effective Date hereof.

ARTICLE VI: TERM AND TERMINATION

6.1 Term: The term of this Agreement shall commence as of the Effective Date and shall terminate on December 31, 2018 ("Initial Term"). Thereafter, this Agreement may be renewed for two (2) successive one (1) year periods (each a "Renewal Term") at the sole discretion of TWCVB, upon prior written notice to Agency, such notice to be provided no less than sixty (60) days before the end of the then current term, of its intent to renew this Agreement for a Renewal Term (the Initial Term and each Renewal Term are collectively referred to herein as the "Term").

6.2 Termination Rights:

(a) This Agreement may be terminated by TWCVB prior to the end of the then current Term "for cause," or by the Parties' written mutual agreement. If terminated by TWCVB "for cause", the Agreement shall be terminated immediately upon delivery of the written notice of termination. For purposes of this Agreement, the term "for cause" shall be defined as:

- i. Willful and continued failure of Agency to perform the duties or obligations (including covenants hereunder) required under this Agreement in a satisfactory manner as determined by TWCVB; or
- ii. Any dishonesty by Agency in its dealings with TWCVB, its employees, customers, suppliers, or any third party in relation to the business of TWCVB, the commission of fraud by Agency, or gross negligence in the performance of the duties of Agency.

(b) If during the term of this Agreement, TWCVB is dissatisfied with the Agency's performance under this Agreement, TWCVB shall provide Agency with written notice identifying the specific matters with which TWCVB is dissatisfied (the "Deficiency Notice") and, acting in good faith, the Parties will attempt to resolve any issues and problems. If, despite working together in good faith for a reasonable period of time, the Agency cannot sufficiently resolve the matters set forth in the Deficiency Notice, TWCVB may consider such willful and continued failure on the part of the Agency to perform its duties and terminate this Agreement upon written notice to the Agency.

Upon termination of this Agreement, Agency will provide an estimate for hourly fees associated with packaging and sending all final files, which TWCVB may accept or reject in its sole discretion.

ARTICLE VII: TRANSITION

From and after the date of execution, below, the Parties agree to work cooperatively to jointly engage in discussions with The Atkins Group regarding Agency's assumption of TWCVB's advertising and marketing services and the orderly transition of providing such services.

ARTICLE VIII: TRAVEL

Prior to TWCVB incurring or being liable for any travel related costs or expenses, Agency shall be required to submit, and receive prior approval from TWCVB for all travel dates and costs by quote or change order (as appropriate), as provided in Article III above, for any business-related meetings, content production activities, site visits and event promotion activities.

ARTICLE IX: GENERAL PROVISIONS

9.1 Employment Agreements: Agency agrees to maintain signed employment agreements with all Agency employees, each such agreement to contain provisions for proper work time behavior and a clear statement of acts considered to be just cause for immediate termination, including but not limited to: (i) unlawful weapon possession; (ii) drug abuse or alcohol intoxication; (iii) immoral, illegal, or indecent behavior; (iv) disrespectful conduct (including on social media); (v) use of vulgarities; and (v) abuse of Agency and TWCVB property.

9.2 Waiver: Except as provided for specifically herein, no delay or omission by any

Party hereto to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. Waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, unless such a waiver is expressly executed by all Parties in writing.

9.3 Severability: If any part of this Agreement contravenes any applicable statutes, regulation, rules or common law requirement, then, to the extent and only to the extent of such contravention, such part shall be severed from this Agreement and deemed non-binding while all other parts of this Agreement shall remain binding, so long as the material purposes of this Agreement can be determined and effectuated.

9.4 Independent Contractor: The Parties agree that Agency is an independent contractor with regard to all services provided under this Agreement. No Party shall hold itself out as an employee or agent of the other Party. No Party has any authority to enter into any contract on behalf of the other, except as expressly provided herein.

9.5 Governing Law and Venue: This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. The Agreement is performable in Montgomery County, Texas, and the Parties agree that venue for any legal dispute under the Agreement shall be Montgomery County, Texas. Any Party, who is the prevailing Party in any legal proceeding brought under or in relation to The Agreement shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party.

9.6 Jury Trial: **THE PARTIES AGREE THAT ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT BEFORE THE COURTS HAVING JURISDICTION OVER MONTGOMERY COUNTY, TEXAS, EACH PARTY WAIVING ANY CONTEST TO JURISDICTION OR VENUE IN SUCH COURTS. THE PARTIES FURTHER ACKNOWLEDGE THEIR RESPECTIVE RIGHTS TO HAVE A TRIAL BEFORE A JURY AND HEREBY WAIVE SUCH RIGHT IN FAVOR OF A TRIAL BEFORE A JUDGE.**

9.7 Miscellaneous: All of Agency's rights are subject to any federal, state, and local laws and ordinances applicable to and during the any event of TWCVB. Agency agrees to comply with all such laws and ordinances.

9.8 Assignment: The Services of Agency are considered specific to Agency, and TWCVB has executed this Agreement based upon the special skills of Agency specifically; therefore, this Agreement and the rights and duties created hereunder shall not be assignable or delegable by Agency without the express written consent of TWCVB.

9.9 Entirety of Agreement: This Agreement and any Exhibits attached hereto contain the entire understanding between the Parties and supersede any prior understanding or written or oral agreements between them respecting this subject matter. There are no representations, agreements, or understandings, oral or written, between the Parties relating to the subject matter of this Agreement not fully expressed in this Agreement. Any modification or Amendment to this Agreement must be written and executed by all Parties.

9.10 Section Headings: Section Headings are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

9.11 Notices: All notifications under this Agreement shall be sent by certified U.S. mail return receipt requested. All notifications shall be sent to:

If to TWCVB:

The Woodlands Convention and Visitor's Bureau
2801 Technology Forest Boulevard
The Woodlands, TX 77381
FAX : 281-210-3499
Attn: Nick Wolda, President

If to Agency:

Adcetera Design Studio, Inc.
3000 Louisiana Street
Houston, TX 77006
Attn: Kristy Sexton, Founder

9.12 Signatures: This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereon were upon the same instrument.

9.13 Conflicts: To the extent that there is any conflict between the main body of this Agreement and any Exhibits, the terms of the Agreement shall govern.

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[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the ____ day of _____, 2017.

ADCETERA DESIGN STUDIO, INC.

**THE WOODLANDS CONVENTION
AND VISITORS BUREAU**

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date

Exhibit "A" – Insurance Requirements

Exhibit "B" – Agency Standard Operating Procedures

EXHIBIT "A"
INSURANCE REQUIREMENTS

Agency shall maintain and require its subcontractors to maintain at all times during the Agreement Term the following coverage at no less than the limits indicated:

<u>Worker's Compensation Insurance</u>	Statutory
Employers Liability	\$100,000
<u>Automobile Liability</u> (Including Owned and Non-Owned Autos)	
Bodily Injury	\$250,000 each person
	\$500,000 each occurrence
Property Damage	\$100,000 each occurrence
<u>Commercial General Liability</u>	
Combined Single Limits for Bodily Injury and Property Damage:	
Each occurrence for premises/operations:	
Broad form CGL liability coverage	\$1,000,000
Products/ Operations aggregate	\$1,000,000
Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
<u>Umbrella Liability</u>	\$1,000,000 each occurrence
	\$1,000,000 annual aggregate
	\$ 25,000 self insured retention

Additionally, Agency's coverage must be written on an Occurrence (not claims made) basis with companies acceptable to TWCVB, must stipulate that no take-out endorsements are included on the General Liability policy, and each policy providing coverage hereunder shall contain provisions that no cancellation or material reduction in coverage in the policy shall become effective except upon thirty (30) days prior written notice thereof to TWCVB, who shall be named as additional insured with respect to liability imposed upon it resulting from the performance of Work under this Agreement. There shall be no right of subrogation against TWCVB and this waiver of subrogation shall be endorsed upon the policies. Prior to the commencement of performance of this Agreement, Agency shall furnish certificates which shall identify TWCVB as an additional insured to TWCVB in duplicate, evidencing compliance with all requirements herein. **The limits of such insurance shall in no way be construed as limiting Agency's obligation to completely defend, indemnify and hold harmless TWCVB.**

EXHIBIT “B”
AGENCY STANDARD OPERATING PROCEDURES

Fee Schedule:

I. Creative Fees

a. Creative Director.....	\$100
b. Associate Creative Director.....	\$95
c. Senior Art Director.....	\$90
d. Art Director.....	\$85
e. Senior Copywriter.....	\$85
f. Copywriter.....	\$75
g. Computer Design.....	\$65
h. Computer Production.....	\$65
i. Production Coordination.....	\$60
j. Traffic/Production Coordination Assistant.....	\$60

II. Account Service Fees

a. Account Service Director.....	\$100
b. Senior Account Supervisor	\$95
c. Account Supervisor.....	\$90
d. Account Planner.....	\$85
e. Account Manager/Executive	\$85
f. Assistant Account Executive	\$75
g. Account Coordinator.....	\$65

III. Media Service Fees

a. Media Director.....	\$0
b. Media Marketing Manager	\$0
c. Media Coordinator	\$0
d. Social Media Manager	\$75

IV. Executive Management Fees

a. President	\$150
b. Executive Vice President.....	\$125

Percentage Fee Rates:

- I. Media placement – 10% commission up to 1MM, 9% beyond 1MM
- II. Printing and binding, including reprints – 15% markup
- III. Various production services through third party vendors – 15% markup
- IV. Research management – 15% markup
- V. TWCVB-directed projects – 15% markup

Compensation:

The scope and activity level of the work needed always determines Agency's compensation and Agency will develop that in agreement with TWCVB's team. Secondly, Agency will work within TWCVB's budget as it relates to discussions on objectives required for the advertising and promotion program. All of this is to maximize the return on investment within the context of TWCVB's overall business plan.

Agency will work with TWCVB on a project-by-project basis. Agency will provide a written estimate including the scope of work and cost for each project based on the hourly rates included in the fee schedule. Estimates will be approved by TWCVB personnel prior to commencing each project. In the event of a change in scope to a project, a written change order will be provided by Agency and approved by TWCVB personnel.

Billing:

I. Frequency of Billing – Agency will prefer to bill once a month at the end of each month. Invoices are completed and mailed to TWCVB by the 12th of the month following the billing period. If TWCVB has special billing needs, Agency will make every attempt to meet those needs.

II. Terms of Payment – Agency terms are net thirty unless other arrangements are made. Media is billed 30 days in advance of the run date to insure that funds will be available to pay vendors when Agency is invoiced.

III. Accounting for Proof of Performance – If requested by the TWCVB, Agency can provide back up for TWCVB production invoices that include copies of vendor invoices, showing the net costs paid by the Agency. Affidavits from broadcast media can be submitted after the flight has run and tear sheets (or entire magazines) can be submitted for all print media.