

# SUCH CHAO2™

This TERMS OF SERVICES AND PROJECT AGREEMENT (the "Agreement") is made on this \_\_\_\_ day of \_\_\_\_, 20\_\_ between \_\_\_\_\_ located at \_\_\_\_\_ (the "Client") and Andre Ivanchuk d/b/a the Agency located at 27 Fennell Street, Suite B #160, Skaneateles, NY 13152 (the "Agency"), and collectively referred to as the "Party(ies)."

**WHEREAS**, the Agency is in the business of providing marketing, design, branding and other advertising, promotional, creative, and consulting services;

**WHEREAS**, The Client wishes to be provided with such services ("Services" as defined below) by the Agency. the Agency agrees to provide the Services to the Client under the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement, the parties, intending to be legally bound, agree as follows:

## 1. Services

- 1.1. Client hereby engages the Agency to provide the design, creative direction, consulting, branding, advertising, development, programming and other marketing, promotional, and intellectual services, all such services as specified on Exhibit A (the "Statement of Work") attached hereto.
- 1.2. Client shall deliver to the Agency all digital artwork, text, photographs, audio, video and other data, information and materials (collectively, the "Content") that Client intends for the Agency to incorporate into or use in connection with the creation of the requested Services outlined on Exhibit A. Client shall be responsible for obtaining all rights, permissions and licenses necessary to use the Content (including any third party content which is part of the Content) delivered to the Agency. the Agency's right to use the Content is limited solely to the performance of its obligations under this Agreement.
- 1.3. Client agrees to reasonably cooperate with the Agency in the performance of the Services. Should Client fail to perform any of its obligations under this Agreement, the Agency shall not be responsible for any delay in Schedule as outlined on Exhibit E or other consequences directly caused by such failure and the Agency reserves the right to reasonably extend the delivery schedule and/or assess reasonable additional charges to the extent required; provided, however, that the Agency shall continue to use its commercially reasonable efforts to perform its obligations hereunder despite such failure. the Agency may rely upon all decisions and approvals from Client pertaining to the Services.

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1.4. Either party may request changes to the Services at any time. Changes must be requested in writing with sufficient detail to enable the other party to assess the impact of the requested change on the cost, timing or any other aspect of the Services. Unless a change is mutually agreed upon by both parties in writing, the latest agreed terms of the Agreement will apply.

## 2. Fees

- 2.1. Client shall pay the Agency the fees set forth in Exhibit A. Client shall also be responsible for paying any taxes (such as applicable sales taxes, duties or goods and services taxes) for which it is liable arising from this Agreement.
- 2.2. *Time of Payment* – All invoices will be due thirty (15) days from the invoice date unless issued differently by the Agency and mutually agreed-upon. Time of Payment shall be included in the final invoice. The grant of any license or right of copyright is conditioned on receipt of full payment.
- 2.3. *Default in Payment* – The Client shall assume responsibility for all collection of legal fees necessitated by default in payment.
- 2.4. *Quoted Fees & Estimates* – The fees and expenses outlined in the Agreement are estimates. Final fees and expenses shall be shown when final invoice is rendered. the Agency reserves the right adjust fees in accordance to any foreseen or unforeseen changes in Services or Statement of Work as outlined on Exhibit A. The Client's written approval shall be obtained for any increase in fees or expenses that exceed the original estimate by 10 percent or more of total fee.
- 2.5. *Design Deposits* – At the time of signing this Agreement, Client shall pay 50 percent of the total fee as an advance against the total fee.
- 2.6. *Printing Deposits* – At the time of signing this Agreement, Client shall pay The Agency a non-refundable 75 percent deposit of the total fee as an advance against the total fee.
- 2.7. *Online Payment* – A 2.9% (plus \$0.30) Online Payment Merchant Fee will be added to final project cost for all payments made online.
- 2.8. *Late Fee* – A 7.5% Annual Interest Rate to be applied on past due invoices. Interest Rate to continue to accrue on a monthly basis until invoice is paid. After 6 months of non-payment invoice may be turned over to legal and collections. Client is responsible for assuming and paying all legal expenses associated with the collected of the invoice.

## 3. Independent Contractor

- 3.1. Both parties agree that the Agency and Client are acting as independent contractors. This agreement is not an employment agreement, nor does it constitute a join venture or

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partnership between the Parties. the Agency shall provide the Services as an independent contractor and shall be wholly responsible for the methods of performance. Client shall have no right to supervise the methods used by the Agency to provide Services to Client. As an independent contractor, the Agency has the right to perform services for others during the term of this Agreement. the Agency has the sole right to control and direct the means, manner and method by which the Services will be performed. The Agency will furnish all equipment and materials used to provide the Services. The Agency has the right to hire assistants as subcontractors, or to use the Agency employees to provide the Services under this Agreement.

- 3.2. If Client wishes to resell the Agency's created work per terms of this agreement, additional terms and conditions may apply as outlined in Exhibit F.

#### **4. Expenses**

- 4.1. Client agrees to reimburse the Agency for all expenses as outlined in Exhibit C. Expense amounts are estimates only. Expenses not used shall be credited to the Client. At the time of signing this Agreement, Client shall pay The Agency 50 percent as a nonrefundable advance against total expenses. If the advance exceeds expenses incurred, the credit balance shall be used to reduce the fee payable or, if the fee has been fully paid, shall be reimbursed to Client.

#### **5. Intellectual Property**

- 5.1. The Agency agrees to grant to the Client license and rights in accordance to terms set forth in Exhibit D.
- 5.2. Notwithstanding the foregoing, the Agency shall own and retain all intellectual property rights in: (i) all pre-existing materials or materials created outside the scope of this Agreement (other than the Content) incorporated by the Agency into the Deliverables and (ii) all back-end components and reusable software and code of a generic nature or general applicability to the Agency's business (collectively, the "the Agency Materials"). Upon payment of all fees, the Agency hereby grants to Client a worldwide, perpetual, irrevocable, non-exclusive, royalty-free right and license to use the the Agency Materials solely as incorporated into any Deliverables
- 5.3. To the extent that any materials licensed to the Agency from third parties, including, but not limited to stock photography, stock video, stock vectors, illustrations, artwork, website utilities, website components, website code, software, and editorial material, that are included in the Deliverables ("Third Party Materials"), that are covered by Copyright and Usage Licenses outside of this Agreement, the Client shall not own nor shall the material transfer. Client agrees to comply with all known license restrictions or obligations in connection with such Third Party Materials. Client agrees that it shall not hold the Agency or his/her agents or employees liable and/or responsible for incompatibilities of Third Party utilities to the Client's Website and/or Technology Specific Projects due to Third

Party updates, edits and modifications after the successful completion of the Project between the Client and the Agency. The Client shall offer first the Agency the opportunity to provide services at the agreed-upon terms and rates to fix any problems resulting from Third Party incompatibilities. the Agency may submit, upon completion of Services, an itemized schedule of material covered by existing Copyright and Usage Licenses.

5.4. The Agency shall be free to use and employ its general skills, know-how, methodologies, algorithms, techniques and expertise relating to the Services, and the other activities undertaken by it in the course of this Agreement, provided that in doing so the Agency does not breach its obligations of confidentiality to Client under this Agreement. Client acknowledges and agrees that the Agency shall have the right to provide to third parties services that are similar to the Services, and to use or otherwise exploit any the Agency Materials in providing such services.

## **6. Indemnification and Limitation of Liability**

6.1. Client shall indemnify, defend and hold harmless the Agency, its employees, officers, directors, assistants, subcontractors, hosting providers, and vendors, from and against any and all liability, claims, causes of action, suits, damages and expenses, including reasonable attorneys' fees (collectively, "Losses"), to the extent based upon a third party claim that : (i) arises out of the gross negligence or willful misconduct of Client; (ii) is based upon the Agency's use of the Content (excluding claims relating to the Agency's use of the Content in a manner not permitted under this Agreement); or (iii) arises out of the nature or use of the Client's products and services (excluding the Deliverables) as provided by the Agency without change or alteration.

6.2. The Agency shall indemnify, defend and hold harmless Client, its officers, directors, and employees from and against any and all Losses, to the extent based upon a third party claim that: (i) arises out gross negligence or willful misconduct of the Agency; (ii) claims relating to the Agency's use of the Content in a manner not permitted under this Agreement; or (iii) the Deliverables (excluding Content and Third Party Materials) and Services infringe any third party intellectual property rights; provided however, the Agency shall have no indemnification obligation for modifications of the Deliverables or Services by Client that are not contemplated or authorized by the parties hereunder.

6.3. Any disputes in excess of \$5,000 arising out of this Agreement shall be submitted to binding arbitration before a mutually agreed-upon arbitrator pursuant to the rules of the American Arbitration Association. The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. The Client shall pay all arbitration and court costs, reasonable attorney's fees, and legal interest on any award of judgment in favor of the Agency.

## **7. Confidentiality**

7.1. The Agency shall consider all information provided by Client to be proprietary unless such information is available from public sources. the Agency shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of Client, or in response to legal process, or as required by law. Neither Party will use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Agreement and which is of a confidential nature. In connection with this Agreement, each party may disclose, or may learn of or have access to, certain confidential proprietary information owned or provided by the other party ("Confidential Information") . Confidential Information includes any data or information, oral or written , that relates to a party, or any of its business activities, technology, developments, inventions, processes, trade secrets, know how, source code, plans, financial information, customer and supplier lists, forecasts, and projections . Confidential Information also includes the terms of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the receiving party; (iii) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the receiving party's possession free of any confidentiality obligations with respect thereto; (v) is independently developed by a party without use of any Confidential Information of the other party; or (vi) is approved for release or disclosure by the disclosing party without restriction.

7.2. The Client agrees to grant the Agency usage rights of a non-editable version of the Deliverables solely for presentation and the Agency's marketing purposes including, but not limited to the Agency website, the Agency print and digital collateral, promotional and advertising purposes, the Agency case studies and client presentations. the Agency agrees not to reproduce, resell or edit native files of the Deliverables.

## 8. General Terms

8.1. *Services & Deliverable Changes* – The Client shall be responsible for making additional payments for changes requested by the Client outside the original Statement of Work outlined on Exhibit A. However, no additional payment shall be made for changes required to conform to the original assignment description. The Client shall offer the Agency the first opportunity to make any changes. Any additional work that falls outside of the agreed-upon fee shall be billed at \$135/hour for graphic, layout and branding. The client will be notified prior to editions being made.

8.2. *Idle Status / Postponement* – If Services outlined in this Agreement remain open and idle for 20 consecutive business days, the Agency may require full payment for services rendered (beyond the initial 50%), followed by a full, "as-is" asset transfer. Partial Invoice may include agreed-upon fees and reimbursable expenses associated with work performed and/or completed. Should Client decide to move forward again, the project will need to be re-estimated.

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- 8.3. *Cancellation / Kill Fee* – In the event of cancellation by the Client, the following cancellation payment shall be paid by the Client: Cancellation prior to the Deliverables of this Agreement being turned in: payment for services rendered as of date of Cancellation plus 35% of the total fee (not to exceed total cost of project). In the event of cancellation, the Agency shall own all rights to Deliverables outlined on Schedule A. The billing upon cancellation shall be payable within thirty days of the Client's notification to stop work. The Cancellation Fee shall be payable in addition to any collected fees associated with the Deliverables of this Agreement including but not limited to Advances, Deposits, and Expense Reimbursements.
- 8.4. *Authorship Credit* – An Authorship credit in the name of the Agency shall accompany the Designs in the following manner:
- 8.4.1. Website Design & Development:
- 8.4.1.1. Information to be listed: "Website Powered by Such Chaos"
- 8.4.1.2. Authorship Credit to be located and placed under the footer section of the design on each page of digital designs, or bottom right corner of last page of printed design material. Authorship Credit not to exceed 11pt font size, to be set in style of design outlined in Statement of Work.
- 8.4.2. Client may exercise right to remove Authorship credit for an agreed-upon one-time fee of 15% percent of final invoice and/or estimate fee.
- 8.5. *Agreement Modifications* – Modification of the Agreement must be written, and and agreed-upon by both parties.
- 8.6. *Code of Fair Practice* – The Client and the Agency agree to comply with the provisions of the Code of Fair Practice.
- 8.7. *Warranty of Originality* – the Agency warrants and represents that, to the best of his/her knowledge, the work assigned hereunder is original and has not been previously published, or that consent to use has been obtained on an unlimited basis; that all work or portions thereof obtained through the undersigned from third parties is original or, if previously published, that consent to use has been obtained on an unlimited basis; that the Agency has full authority to make this agreement; and that the work prepared by the Agency does not contain any scandalous, libelous, or unlawful matter. This warranty does not extend to any uses that the Client or others may make of the the Agency's product that may infringe on the rights of others. Client expressly agrees that it will hold the Agency harmless for all liability caused by the Client's use of the Agency's product to the extent such use infringes on the rights of others.
- 8.8. *Dispute Resolution* – Any disputes in excess of \$5,000 arising out of this Agreement shall be submitted to binding arbitration before a mutually agreed-upon arbitrator pursuant to the rules of the American Arbitration Association. The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. The Client

shall pay all arbitration and court costs, reasonable attorney's fees, and legal interest on any award of judgment in favor of the Agency.

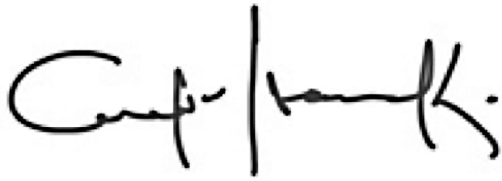
8.9. *Priority Status & Turnaround* – the Agency reserves the right to expedite Client requests, and assign level of priority, based upon, but not limited to, the Agency's production schedule, the Agency availability, nature of the request, and Client deadline. the Agency agrees to expedite Client work according to reasonable production and turnaround scheduling. Any work outside a reasonable turnaround timeframe could be subject to a rush charge of 30 percent of the original agreed-upon fee.

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have executed and delivered this Agreement as of the Effective Date.

**The Agency:**

Such Chaos  
27 Fennell Street, Suite B #160,  
Skaneateles, NY 13152  
(315) 657-5691

SIGNED:



BY: Andre Ivanchuk, Owner

DATE:

**Client:**

Street  
City, ST 12345  
(000) 000 - 0000

SIGNED:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE:

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**EXHIBIT A - Statement of Work**

The Agency shall provide the following Services to the Client in accordance with the term and conditions of this Agreement:

**1. Project Brief:****2. Deliverables:**

- 2.1. Deliverables to be agreed-upon on a project-basis. Subject to additional terms and conditions if necessary as deemed needed by Agency and/or Client.

**3. Project Fee:**

- 3.1. The Agency shall structure project estimates and/or quotes on a flat-fee basis to be comprised of an allocated time estimate and an hourly fee of \$135.
- 3.2. Additional Fees to be agreed-upon on a project-basis. Should project require additional time to complete, the Agency agrees to first notify the Client with a request when project fee is 90 percent of total estimate. The Agency shall have first right to continue and complete the project. Additional time and fees shall be subject to terms and conditions of this Agreement if necessary as deemed needed by Agency and/or Client.

**4. Retainer Fee:**

- 4.1. The Client wishes to engage the Agency and retain services for a \_\_\_\_\_-month term.
- 4.2. A retainer of \$\_\_\_\_\_ (the "Retainer") is payable by the Client upon execution of this Agreement.
- 4.3. Retainer agreement and/or terms may be terminated by either party with a 30-day written notice. Subject to terms and conditions of this agreement.

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## EXHIBIT B - Website Hosting & Maintenance

In addition to work and fees set forth in Exhibit A, the Agency shall provide the following Website Hosting and Maintenance to the Client in accordance with the terms and conditions of this Agreement:

### 1. Fees:

1.1. Fees to be agreed-upon on a project-basis. Subject to additional terms and conditions if necessary as deemed needed by Agency and/or Client.

### 2. Hosting: unless otherwise agreed-upon, Client to assume full responsibility to setup, manage and maintain hosting.

2.1. *Technical Support*: Support to be agreed-upon on a project-basis. Subject to additional terms and conditions if necessary as deemed needed by Agency and/or Client.

**EXHIBIT C - Expenses**

Client shall reimburse the Agency for all expenses as outlined below. Expense amounts are estimates only. Client's written approval shall be obtained for any increase in expenses that exceed the original expense estimate by 10% or more of total fee on Exhibit C.

1. *Illustrations*
2. *Photography*
3. *Models and Props*
4. *Materials and Supplies*
5. *Postage and Handling*
6. *Airfare*
7. *Transportation*
8. *Lodging*
9. *Meals*
10. *Telephone*
11. *Internet*

*Total Expense Estimate: \$0*

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## EXHIBIT D - License to Use / Rights Transferred

The Agency shall provide the Service to the Client in accordance with the terms and conditions of this Agreement and License to Use and Rights Transferred set herein.

1. **Rights Transferred - Non-Exclusive Usage.** Upon successful completion and fulfillment of the terms of this Agreement, the Agency agrees to grant to the Client the following non-exclusive, irrevocable, royalty-free rights of Usage and Reproduction:
  - 1.1. Title of Product:
  - 1.2. Category of Use:
  - 1.3. Medium of Use:
  - 1.4. Edition (if book):
  - 1.5. Geographic Area:
  - 1.6. Time Period:
  - 1.7. Additional Terms: Any usage rights not exclusively transferred are reserved to the Agency. The Agency will retain all original materials associated with the Deliverables of this Agreement and/or created by the Agency including, but not limited to native design files, layouts, sketches, prototypes, photography, videos, illustrations, website utilities, website components, website code, software, and editorial material. Any transfer of usage rights is conditional upon receipt of full payment.
  
2. **Rights Transferred - Exclusive / Copyright Transfer.** Upon successful completion and fulfillment of the terms of this Agreement, the Agency agrees to grant to the Client;
  - 2.1. Exclusive rights of Usage, Reproduction and Copyright, to use, copy and modify any original Material;
  - 2.2. Including, but not limited to native design files, layouts, sketches, prototypes, photography, videos, illustrations, website utilities, website components, website code, software, and editorial material;
  - 2.3. Any material and content used in the Deliverables outlined in this Agreement that are previously covered by existing Copyright and Usage Licenses is not cover under this Agreement and shall not transfer including, but not limited to stock photography, stock video, stock vectors, illustrations, artwork, website utilities, website components, website code, software, and editorial material. The Agency agrees to submit, along with the Transfer, an itemized schedule of material covered by existing Copyright and Usage Licenses.
  - 2.4. Furthermore, the Agency agrees to transfer to the Client
    - 2.4.1. The right to make further copies of all or part of the Deliverables for any use, internal or public;
    - 2.4.2. The right to edit, change, or modify all or part of the Deliverables.
  - 2.5. Rights to Retain - The Client agrees to grand the Agency Limited Usage rights of a Non-Editable version of the Work solely for presentation and the Agency's marketing purposes including, but not limited to the Agency's website, the Agency print and digital collateral, promotional and advertising purposes, the Agency case studies and

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client presentations. the Agency agrees not to reproduce, resell or edit native files of the Work.

2.6. Transfer Fee: The Client agrees to pay the Agency an agreed-upon Transfer of Rights fee of 40% percent of final and/or estimate fee.

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**EXHIBIT E - Schedule**

the Agency shall provide the Service to the Client in accordance with the terms and conditions of this Agreement and Schedule below. Proposed Schedule subject to change.

1. **Kickoff** - TBD
2. **Project Milestones**
  - 1.
3. **Design**
  - 3.1.
4. **Development**
  - 4.1.

Total Time for Front-End Design:

Total Time for Development:

Total Time for Completion:

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**EXHIBIT F - Subcontractor & Agency to Agency Terms**

The Agency shall provide Services to the Client in accordance with the terms and conditions of this Agreement and Schedule, on a sub-contractor basis, to be resold by the Client, subject to the following additional terms:

**1. Deliverables:**

- 1.1. Deliverables to be agreed-upon on a project-basis. Subject to additional terms and conditions if necessary as deemed needed by Agency and/or Client.

**2. Project Fees:**

- 2.1. Additional Fees to be agreed-upon on a project-basis. Subject to additional terms and conditions if necessary as deemed needed by Agency and/or Client.
- 2.2. The Agency, unless explicitly agreed-upon between the Agency and Client, shall issue project estimates and quotes directly to the Client. Unless otherwise agreed-upon between the Agency and Client, the Agency also agrees not to disclose project fees to the Client's clients, customer and/or users per the terms of this agreement.
- 2.3. The Agency, unless explicitly agreed-upon between the Agency and Client, shall issue invoices directly to the Client, subject to terms and conditions of this agreement.

**3. Retainer Fee:**

- 3.1. The Client wishes to engage the Agency and retain services for a 12-month term.
- 3.2. A retainer of \$\_\_\_\_\_ (the "Retainer") is payable by the Client upon execution of this Agreement.
- 3.3. Retainer agreement and/or terms may be terminated by either party with a 30-day written notice. Subject to terms and conditions of this agreement.

**4. Non-solicitation:**

- 4.1. The Agency and the Client agree at no time during the term of the Agreement that either party shall directly solicit clients, customers and users represented by either The Agency or the Client. The Agency and Client are not responsible or liable should a client, customer or user engage The Agency or Client directly outside the terms of this Agreement for Services provided by the Agency or Client. No monies shall be collected, paid or exchanged to either party.

**5. Promotion:**

- 5.1. The Agency may provide the Client promotional material, including but not limited to work samples, project history, agency history, (customer, client or user) references, accolades, media mentions, capabilities, etc. The Client agrees to use provided material per Fair Use doctrine of the United States. The Client agrees not to represent provided material as Client's own and/or created material. All inherent copyright shall remain with the Agency. Upon termination of the Agreement, the Client agrees to return all provided material and discontinue using, representing and disclosing the provided material.

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