

Consulting Agreement

RECITALS

WHEREAS, the Client is in need of assistance in the support area of Internet Marketing; and

WHEREAS, Rosemont Media has agreed to perform marketing support and Internet Marketing consulting services for the Client, and other related marketing activities, as directed by the Client (“Services”); NOW, THEREFORE, the parties hereby agree as follows:

Term and Termination: The term of this Agreement is 12 months (“Initial Term”) and will commence on the first date Services are rendered by Consultant as stated on Consultant’s invoice (“Commencement Date”). Either party may terminate this Agreement by giving the other party 30 days written notice by Certified U.S. Mail (“Cancellation”). In the event of any such Cancellation, Client will be responsible for paying all fees due and owing hereunder for Services rendered through the date of Cancellation. Client further will be responsible for paying all other expenses incurred by Consultant through the date of Cancellation, including without limitation media purchased or ordered through and including the date of Cancellation. Any un-used services are non-transferable and non-refundable. This Agreement may be modified or amended only pursuant to a written agreement signed by both parties hereto.

Payment Schedule: All fees shall be payable pursuant to Consultant invoices. This does not apply to any agreement addendums which are subject to their own Terms and Conditions. Fees not paid within 15 days of invoice date will accrue interest at a rate equal to 1% per month. Client may not offset fees owing hereunder for any reason and Client shall reimburse Consultant for all expenses incurred in collecting past due fees (including without limitation, attorneys’ fees).

Confidentiality: Consultant and Client agree to treat as confidential all confidential and proprietary information of the other party, and not to disclose such confidential information to any third party except as may be reasonably required for the disclosing party to satisfy its obligations hereunder or to conduct its own business affairs. For information to be treated as confidential hereunder, it shall be not generally known to the public and the subject of the designating party’s reasonable efforts to maintain its secrecy. Each party shall designate any confidential information as “Confidential” in the initial communication of such information to the other party. Confidential information hereunder shall include but is not limited to customer lists, business plans, proprietary formulas, compilations, methods, techniques, and marketing strategies. Without limiting the generality of the foregoing, each party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of the other party’s confidential information, provided, however, that in no event shall such degree of care be less than reasonable in light of general industry practice. The parties acknowledge that this Agreement constitutes confidential information of the parties. Client shall be prohibited from soliciting or otherwise hiring an employee or independent contractor of Consultant at any time during the Initial Term described herein and for a period of 18 months following the termination of this Agreement.

Notices: Any notices required by or provided pursuant to this Agreement shall be given in writing to:

If to Consultant:

Rosemont Media LLC

1010 Turquoise Street, Suite 301

San Diego, CA 92109

Limitation of Liability: Consultant warrants to Client that all Services hereunder will be performed in a professional manner consistent with industry practices. Client represents and warrants to Consultant that none of the content, materials or data provided by Client to Consultant (“Client Content”) infringes the intellectual property of other proprietary rights of Consultant or any third party, or contains any Individually Identifiable Health Information (as that term is defined by federal regulation), or Personal Information or Medical Information (as those terms are defined by California law) (collectively, “Identifying Information”). Client shall indemnify Consultant for any claims, expenses or liabilities arising out of any Client Content, including those based on infringement, or violation of applicable federal and state laws and regulations pertaining to privacy and security of health information (“Privacy Laws”). Client acknowledges and agrees that Consultant’s Services do not include a data scrubbing/removal service, and further than Client is responsible for removing all Identifying Information prior to disclosing data, media, or information of any kind or format to Consultant. Notwithstanding the foregoing, Client further represents and warrants that Client has obtained a written patient authorization in compliance with Privacy Laws prior to sharing any Identifying Information with Consultant. Except as set forth above in this paragraph and elsewhere in this Agreement, neither party makes any warranties of any kind, either expressed or implied, including, without limitation, (a) warranties of merchantability or fitness for a particular purpose, or (b) as to the results that Client may achieve upon completion of Services. In no event will either party be liable to the other for any lost profits or any other special or consequential damages, for any reason. Consultant’s liability shall be limited to the amounts paid by Client hereunder. While accessibility on the internet is required under the law, Client hereby acknowledges that the United States Department of Justice (“DOJ”) has not yet provided clear guidelines as to accessibility on the internet. While Consultant shall use its best efforts to minimize risk of any accessibility related claims in providing the Services hereunder, Consultant does not represent that any Services provided hereunder conform to any specific accessibility standard (e.g. WCAG or other similar standards). Given the lack of clarity from the DOJ as to said accessibility standards, there is currently no way to guarantee a website is fully compliant. Therefore, Consultant makes no such representations of compliance, nor does Consultant warrant any Services hereunder as to accessibility related claims. Should Client want further guidance on standards of accessibility on the internet, it is recommended that they consult with an attorney who specializes in accessibility and internet law.

Technologies, Processes and Methodologies: All trademarks, patents, copyrights, and other intellectual property rights owned by either party during the Initial Term hereof shall continue to be owned solely by such party, and nothing herein shall be deemed to confer any rights to any such intellectual property on the other party. Consultant utilizes its advanced web analytics proprietary processes, methodologies, software, source and object code, designs, ideas and applications developed by Consultant to create work product for customers generally including, without limitation, the way in which Consultant presents and delivers data to customers, including Client. These intellectual property assets are and shall remain the sole and exclusive property of Consultant, and are separate from any work product created hereunder specifically for Client or included with any deliverable provided to Client, which work product shall be deemed to constitute “work for hire” and shall be owned by Client. Work for hire product is limited to: media venue created executions; web-based content; artwork and design created or developed specifically for Client; deliverables; print ads; websites; work product bearing Client copyright or trademark protected works, designs, marks, and logos; data collected through web-based functionality implemented on behalf of Client; and program monitoring reports.

Miscellaneous: Consultant shall not be liable for failure of delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control or a failure on the part of Client to provide to Consultant, materials, data or other information in a timely manner (“Client’s Delay”). In

addition, in the event that any deliverable to be provided by Consultant hereunder is delayed by more than 7 days due to Client's Delay, or in the event that a deliverable exceeds reasonable revision time, additional fees may be due and owing hereunder related to Consultant's need to redeploy or extend the use of staff and/or incur other expenditures to satisfactorily perform its obligations hereunder. Consultant may employ the use of subcontractors for specific highly specialized elements of this Agreement where Consultant's internal resources are not available due to project delivery timing or specific competencies required.

The rights and obligations of the parties shall be governed by the laws of the state of California, without reference to conflict of law principles. Any dispute or claim arising out of or in connection with this Agreement shall be finally settled by arbitration in San Diego, CA, under the rules of commercial arbitration of the American Arbitration Association. If any provision of this Agreement is held to be unenforceable or invalid for any reason, the remaining provisions will continue in full force and effect with such unenforceable or invalid provision to be revised or interpreted to best accomplish its original intent and objectives. Each party will be and act as an independent contractor and not as an agent, partner, employee or joint venturer with the other party for any purpose related to this Agreement or the Services contemplated herein. This Agreement constitutes the entire agreement between the parties related to the subject matter hereof and supersedes all prior oral or written communications or understandings related thereto. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement between the parties.

If you have questions regarding this Agreement or wish to obtain additional information, please send an email to info@rosemontmedia.com