

## Terms and Conditions

### 1. **Definitions.** The following definitions shall apply to this Agreement:

a) "Broadcast" means the transmission by wire or over the air, including by internet, intranet, closed circuit, cable or satellite, of any Intellectual Property for public reception of sounds and/or images, or of the Performances thereof. Transmission of encrypted signals is "Broadcasting" where the means for decryption are provided by the broadcasting organization or with its consent.

b) "Confidential Information" means any information, including design, drawing, specification, data sheet, catalog, sale, and manual, whether or not reduced to writing, that (1) relates to the Product(s) or ChartHouse's business; (2) is not generally known or readily ascertainable; (3) provides a competitive advantage or is considered to be confidential; and (4) includes the terms and compensation provided by this Agreement.

c) "Customer" means any potential and actual participant/attendee of a Performance, and purchasers and users of any Product or Performance, or to whom the Parties have marketed a Product or Performance in which Contractor has been involved.

d) "Intellectual Property" and "Marks and Materials" mean the copyrights, trademarks, service marks, ideas, inventions, discoveries, symbols, images, expressive works (verbal, visual, musical, theatrical), or other forms of information developed and/or owned by ChartHouse.

e) "Inventions" means all inventions, discoveries, improvements, original works of authorship, processes, techniques, know-how and data, whether or not patentable or copyrightable or protectable as trade secrets, made or conceived or first reduced to practice or learned by Contractor during this Agreement and which result from any work she performed for ChartHouse or that are made through the use of any of ChartHouse's equipment, facilities, supplies, trade secrets or time. Inventions excludes any Invention for which no equipment, supplies, facility, or trade secret information of ChartHouse was used and that were developed entirely on Contractor's own time, and (a) that does not relate directly to ChartHouse's business or to ChartHouse's actual or demonstrably anticipated business research or development, or (b) that does not result from any work performed by Contractor at ChartHouse.

f) "Performance(s)" refers to the performance of any ChartHouse work (including seminar, training, facilitation, workshop, coaching, and exhibition) and any use of any Intellectual Property to market or execute the Performance. A Performance includes a speaker to an audience (large or small), and a one-on-one or audience facilitation, coaching, training, and exhibition.

g) "Product(s)" refers to the motion pictures (e.g. films and videos), written materials, and ancillary products (e.g. stuffed animals, certificates) that ChartHouse and/or authorized distributors of ChartHouse offer for sale, rental, or licensed used in any format.

### 2. **License of Intellectual Property.**

- a) License. ChartHouse grants Contractor, individually, a limited and nonexclusive license to display and perform ChartHouse's Intellectual Property at Performances arranged by and booked through ChartHouse pursuant to the terms of this Agreement. Contractor shall devote his/her best efforts to promote ChartHouse Products and Performances and perform Performances pursuant to the highest professional standards of contractor's industry. Contractor may identify himself/herself as an authorized or official ChartHouse or *FISH!* Performer. This license grants Contractor no rights to copy, reproduce, publish, distribute, Broadcast, digitize, edit, create derivative works from, loan, sell, rent, lease, transfer, or circulate any Products, in whole or in part; assign any portion of this license; or use any Intellectual Property to advertise, market, display, or otherwise for Performances or events not booked through ChartHouse absent ChartHouse's written permission. This license may not be assigned.

- b) To the extent that Contractor asserts any proprietary rights to intellectual property, ChartHouse shall honor such rights provided Contractor must disclose such intellectual property to ChartHouse in advance and execute a First Addendum addressing the rights to any such intellectual property.

3. **Payment.** Contractor will invoice ChartHouse after the event, and ChartHouse agrees to pay Contractor within thirty days of receipt of Contractor's approved invoice.

4. **Duties as Independent Contractor.** The Contractor shall provide all equipment and labor to promote and perform his/her assigned duties for each Performance. In addition, Contractor (1) shall pay for and obtain any fees, permits, passports, and licenses necessary to perform its work; (2) shall comply with all laws, ordinances, rules, regulations and orders of any government authority including local tax laws, social security requirements, worker's compensation rules, and OSHA rules; (3) shall supervise, direct, and perform its work in a professional workmanlike manner; (4) shall inform ChartHouse timely of any changes to the budget or timeline; and (5) upon request, shall promptly inform ChartHouse of any other information relating to its work. In addition to the foregoing, upon request, Contractor shall provide a certificate evidencing current occurrence-based liability insurance coverage, and shall maintain such policies during the term of this Agreement.

5. **Independent Contractor Status.** Contractor is independent of ChartHouse and shall not be considered an agent or legal representative of ChartHouse for any purpose. Contractor is granted no right, express or implied, to negotiate, assume, or create any obligation or responsibility in the name of ChartHouse. Contractor has no right to participate in any of ChartHouse's presently existing or future Contractor benefits or Contractor benefit plans. Contractor shall provide, at its own expense, such office, facilities, Contractors, and training as may be required to carry out its obligations under this Agreement. Contractor is solely responsible for all federal, state and local taxes that may be payable in connection with its Services or this Agreement.

6. **Training.** Contractor acknowledges and agrees that critical to her/his role as a performer of ChartHouse's Intellectual Property, Contractor must deliver all Performances with an authentic message approved by ChartHouse. Contractor therefore agrees to undergo without compensation Train the Trainer Training if requested by ChartHouse annually, accept coaching or requests by ChartHouse regarding how the Performance is conducted, and submit for review and evaluation/approval of Contractor's Performance by ChartHouse. Contractor agrees that failure to accept requests for changes in the Performance will constitute a material breach of this Agreement and any such breach that is not cured within fourteen (14) days will constitute good cause for termination.

7. **Quality Control.** Contractor acknowledges that ChartHouse has high economic value in its Intellectual Property and the manner in which the Intellectual Property is presented. Contractor agrees to comply with any requirements established by ChartHouse, including the style, design, display and use of the Intellectual Property, and correctly use the trademark and copyright notices with every use of the Intellectual Property. Contractor further agrees to obtain ChartHouse's prior approval of new materials Contractor may develop for any Event or Performance and all such works shall be subject to Inventions paragraph herein, including any customizing materials for a particular Event. ChartHouse may request Contractor to cease any use of Intellectual Property or materials that ChartHouse reasonably deems to reflect negatively on the image of ChartHouse or the Products and, if Contractor refuses to do so or fails to do so within twenty four (24) hours, terminate this Agreement for good cause and/or, at ChartHouse's option, seek injunctive relief pursuant to the Remedies paragraph herein, which Contractor agrees is reasonable and necessary to protect ChartHouse's proprietary rights.

8. **Retention of Proprietary Rights.** ChartHouse reserves and retains all rights to the Intellectual Property and strictly prohibits any unauthorized copy, edit, broadcast, resale, publication, creation of a derivative work, circulation, or commercial use of the Intellectual Property, in whole or in part, including, but not limited to, the recorded Performances, printed Performance, video, audio and/or computer or electronic materials without ChartHouse's express written consent. Contractor therefore agrees that it will not, during or after the term of this Agreement, engage in any conduct, directly or indirectly, that would infringe upon, harm or contest the rights of title of ChartHouse in or to the Intellectual Property (including unauthorized use), any goodwill, or the validity of the Intellectual Property. Contractor acknowledges and agrees that any goodwill associated with the use of the Intellectual Property shall inure to the sole benefit of ChartHouse. Contractor further will take all commercially reasonable actions to prevent duplication or the unauthorized showing of the Intellectual Property, and recordings of any Performance, and, if Contractor should become aware, at any time, of the unauthorized use, duplication or recording, Contractor shall immediately contact ChartHouse in writing and take whatever steps are reasonable and necessary to halt the unauthorized use or duplication.

9. **Inventions.** Contractor agrees that any Invention will be ChartHouse's sole and exclusive property and its assigns, and ChartHouse and its assigns will have all rights, title, and interest, including patent rights, copyrights, trade secret rights and all other intellectual property rights of any sort, throughout the world related to all Inventions. Contractor will promptly disclose to ChartHouse in writing all Inventions. To the maximum extent permitted by law, all Inventions are deemed "works made for hire" under the United States Copyright Act and ChartHouse is deemed the author of any Inventions. To the extent any Inventions are determined not to constitute "works made for hire," Contractor agrees to irrevocably assign and transfer to ChartHouse all right, title and interest in the Inventions at no additional consideration. To that end, Contractor will deliver promptly to ChartHouse any written instrument and perform any acts necessary in ChartHouse's opinion to preserve property rights and/or to vest the rights and title to the Invention in ChartHouse. Contractor waives all moral rights to each Invention, including without limitation, all rights of identification and authorship and all rights of approval, restriction or limitation, use or subsequent modifications. Contractor acknowledges that, by virtue of ChartHouse's ownership of such Inventions, ChartHouse shall have the right to revise, rewrite or otherwise modify the Inventions and to exploit the Inventions throughout the world in any medium now known or hereafter discovered, and Contractor hereby waives any rights with respect to the Inventions. Contractor warrants, to best of its knowledge, that any Invention submitted to ChartHouse by Contractor will be original and will not violate any proprietary or intellectual property right of another person. Contractor's obligations under this Paragraph will continue beyond the termination of this Agreement with respect to Inventions or other discoveries and improvements conceived or otherwise developed during this Agreement, and is binding upon Contractor's assigns, executors, administrators and other legal representatives.

10. **Confidential Information.** Contractor acknowledges that Confidential Information has been and will continue to be created or established as a result of substantial efforts and expenditures on the part of ChartHouse; that Confidential Information is not and will not be in the public domain; and that ChartHouse has taken reasonable measures to preserve the secrecy of its Confidential Information. Contractor further understands that its relationship with ChartHouse creates a relationship of confidence and trust with respect to ChartHouse's Confidential Information. All Confidential Information shall be the sole property of ChartHouse and its assigns. At all times, both during and after termination of this Agreement, Contractor agrees to keep in confidence and trust all Confidential Information or anything relating thereto. Contractor shall not disclose to any third party or publish or submit for publication any Confidential Information without the prior written consent of the ChartHouse. Contractor's obligations under this Paragraph will continue beyond the termination of this Agreement.

11. **Competition Restrictions.**

a) **Respect for ChartHouse Property and Leads.** Contractor will not pursue any business activity, including delivering Performances, that incorporates or uses ChartHouse materials or Intellectual Property with other materials or Performances without ChartHouse's prior written consent. For a period of twelve months following termination of this Agreement, Contractor shall not solicit, sell to or give other services to clients that attended any of the Contractor Performances or were introduced by ChartHouse, unless Contractor had a prior contractual relationship with such clients which is disclosed and acknowledged by ChartHouse prior to the Performance. ChartHouse welcomes and encourages referrals from the Contractor and is willing to compensate Contractor upon mutual agreement of the Parties.

b) **Stipulated Reasonableness.** Contractor acknowledges that the nature of its position and access to ChartHouse's confidential information, the period of time necessary to allow clients to become familiar with ChartHouse's replacement, and the period of time necessary to obliterate the identification between ChartHouse and Contractor in the minds of ChartHouse's Customers commands that the twelve month noncompetition period be imposed for the protection of ChartHouse's investment in its business. Contractor further acknowledges and agrees that the restrictions contained in this Agreement shall apply no matter how or why this Agreement terminates and shall survive termination.

12. **Termination.** This agreement will terminate upon thirty (30) days written notice. Contractor shall perform all Work agreed to perform prior to notice of termination, unless ChartHouse elects to replace Contractor or as the Parties agree otherwise. This Agreement automatically terminates in the event of the voluntary or involuntary bankruptcy, dissolution or insolvency of Contractor, if an entity, or the death or permanent disability of Contractor, if an individual.

13. **Rights of Parties on Termination.** Upon expiration or termination of this Agreement:

a) **Return of Property.** Contractor agrees that upon the termination of this Agreement to immediately return to ChartHouse all company property, including but not limited to the originals and all copies of any and all Products, documents (including computer data, disks, programs, or printouts) that contain any customer information, financial information, Product and Performance information, or other information that in any way relates to ChartHouse, its Products or Performances, its clients or other aspects of its business, including, but not limited to, any Confidential Information or Trade Secrets of ChartHouse. Contractor further agrees to not retain any summary or copies of this information.

b) **Cease Use of Intellectual Property.** Contractor shall, at its own expense, cease all use of and activities relating to the Intellectual Property and/or Products, cease use of any word, title, expression, mark, design or marking that, in the reasonable opinion of ChartHouse, is confusingly similar to the Intellectual Property, immediately cancel all marketing and other activities relating to the Intellectual Property and/or Products, and certify in writing to ChartHouse that Contractor has completely terminated its use of any and all such marks, designs, or markings, and any word, title or expression that appeared in or on any name, device or other materials used in conjunction with Contractor's business. Contractor agrees that violation of this provision would cause ChartHouse irreparable harm that will not be fully remedied by monetary damages, and that injunctive relief is necessary to enforce this provision pursuant to the Remedies paragraph herein.

c) **Sole Remedy.** ChartHouse shall owe payments only for services accrued and unpaid through the date of expiration or termination. Under no circumstances shall either Party be liable to the other Party for damages arising from the non-renewal of this Agreement. This provision includes, but is not limited to, compensation, damages for loss of prospective compensation; future profits; costs incurred in cancelling or ceasing to use any rights under this Agreement; goodwill or loss thereof; or expenditures, investments, leases, or any type of commitment made in connection with the business of such party or in reliance on the existence of this Agreement.

d) **Surviving Obligations.** The obligations of Contractor under the Inventions, Confidential Information, Competition Restrictions, Rights of Parties on Termination, Indemnification, and Remedies paragraphs shall survive the termination or non-renewal of this Agreement, for any reason.

e) **Indemnification.** Each Party will indemnify the other Party and its Contractors, officers, directors, representatives, and agents from any and all claims and expenses, including costs and reasonable attorney's fees, arising from (a) any obligation imposed on the other Party incurs to pay any withholding taxes, social security, unemployment insurance, workers' compensation insurance, disability insurance or similar items, including interest and penalties, in connection with any payments made to Contractor under this Agreement; or (b) the Party's negligence or intentional misconduct or omissions.

f) **Remedies.** Contractor acknowledges that its breach of this Agreement will cause ChartHouse irreparable harm that will not be fully remedied by monetary damages. If Contractor violates this Agreement, ChartHouse may, but shall not be required to, seek injunctive relief and/or any other remedies allowed at law or in equity, or under this Agreement. Any injunctive relief sought by ChartHouse shall be in addition to and not in limitation of any monetary relief or any other remedies or rights to which ChartHouse is or may be entitled at law, in equity under this Agreement, and shall be venued in Minnesota, which the Parties agree that personal jurisdiction and venue in such court are proper. In addition, ChartHouse shall be entitled to collect any costs, including reasonable attorneys' fees, incurred in enforcing or recovering damages from Contractor's breach of any term of this Agreement.

g) **Warranties of Contractor.** Contractor represents and warrants that the undersigned has the right, power and authority to enter into this Agreement and assign all rights subject to the Inventions paragraph to ChartHouse.

#### 14. **Miscellaneous**

a) **Integration.** This Agreement represents the entire agreement between the Parties on the subject matter hereof and supercedes all prior discussions, agreements, and understandings on the subject of this Agreement. No modification of this Agreement will be effective unless written and signed by both Parties. No agreement permitting any further use of any ChartHouse Intellectual Property shall be valid unless in writing and signed by an officer of ChartHouse. This Agreement does not terminate or supercede duties from another written agreement between the Parties on a different subject including any employment agreement.

b) **Severability.** Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

c) **Nonwaiver.** The Parties agree that the delay or failure of the other Party to require performance of any provision of this Agreement shall not operate as a waiver of any right to later demand strict performance of the same or other provision.

d) **Notices.** All notices shall be in English and shall be in writing. Notices shall be delivered either by (1) electronic mail followed by a copy via regular mail, or (2) by Federal Express, UPS, or comparable carrier sent one-day or next day priority service. The Parties shall send Notices to the last known address of the other Party.

e) **Law and Venue.** The Parties acknowledge and agree that they entered into this Agreement in the State of Minnesota, United States of America. The Parties further acknowledge and agree that the Agreement should be construed, enforced and performed pursuant to the laws of the State of Minnesota, United States of America, without reference to principles of conflicts of law. All claims or actions related to this Agreement and not subject to injunctive relief as provided above must be determined by binding arbitration under the Rules of the AAA in Hennepin County, Minnesota, and the Parties agree that personal jurisdiction and venue in such forum is proper.

f) **Successors and Assignment.** This Agreement is binding upon and shall inure to the benefit of ChartHouse's respective heirs, successors and assigns. The Licensee shall not sell, assign, delegate or otherwise transfer any of its rights or obligations hereunder without ChartHouse's express written consent.

g) **Counterparts.** This Agreement may be executed in separate counterparts, each of which shall be deemed an original, even though it may contain less than all of the signatures of the Parties, and all such counterparts together shall constitute one and the same instrument when all parties have executed and delivered one or more of such counterparts.