

DESIGNER AGREEMENT

This Agreement is made as of the ____ day of _____, 20__ by and between Kim Designs LLC a Virginia limited liability company with offices located at 191 Shannon Court, Winchester, VA 22602 ("Kim Designs") and _____ with offices located at _____ (the "Designer") and provides:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. Designer hereby grants to Kim Designs a royalty-free world-wide license to copy, distribute, offer for sale, and publicly display, including but not limited to the right to display on the Internet, any and all creative work that Designer posts to the KimDesigns.com website (the "Designs"). The rights granted to Kim Designs in this section shall continue for as long as Designer posts any Designs on the KimDesigns.com website (the "Website"). Designer agrees that any Designs posted to the Website will remain on the Website for a minimum of one year, or until the Design has been sold if it sells in less than a year (the "Display Period"). Designer shall have complete control over posting Designs to or (after the Display Period ends) removing Designs from the Website. Posting a Design to the Website constitutes an offer to sell all of Designer's rights (including copyright rights) in such Design. After the Display Period Designer can revoke the offer by removing the Design from the Website. If Kim Designs receives an offer to purchase one or more of Designer's Designs, then at that point Designer's offer to sell such Designs shall be irrevocable, and Designer will not be able or permitted to remove from the Website any such Designs for which offers to purchase are pending.
2. Designer understands and agrees that if a buyer purchases one or more Designs through the Website, then immediately upon Designer's receipt of full and final payment for such Designs, Designer shall be deemed to grant, transfer, assign and convey to the buyer and its successors and assigns all right, title, interest, and ownership in and to the Designs for use throughout the world in perpetuity in any manner or media whether known or hereafter invented, including but not limited to all rights accruing to Designer under any and all copyright laws and all subsidiary rights. Designer understands and agrees that any buyer of his or her Designs through the Website shall be deemed a third party beneficiary of this agreement.
3. Designer further agrees not to knowingly or intentionally circumvent Kim Designs and directly or indirectly sell or license any rights in any designs or creative works to any party that purchases a Design from Designer through Kim Designs. If Designer circumvents Kim Designs, then Designer shall be liable to Kim Designs for a reasonable commission on each design so transferred or licensed.
4. From time to time Kim Designs may share confidential proprietary information with Designer that is marked "Confidential" or "Secret" or something similar, and is not otherwise publicly known (the "Confidential Information"). Designer agrees to observe the strictest secrecy with respect to such Confidential Information, to maintain its confidentiality, and that he or she will not, at any time during the term of this Agreement or after it ends, use or disclose the Confidential Information for any purpose not authorized in writing (including email) by Kim Designs. Designer acknowledges that Kim Designs is entitled to seek injunctive relief without posting bond if Kim Designs reasonably believes that Designer either has breached or is likely to breach this obligation.
5. Designer further agrees to provide the Designs to Kim Designs and to the buyer in the format and resolution required by each, and to execute any and all other documents and instruments reasonably necessary to convey to and/or vest in the buyer all rights, including but not limited to all copyrights in any purchased Designs in the United States of America and in any other country. Designer agrees, at the buyer's expense, to cooperate as may be reasonably necessary to assist the buyer in enforcing the buyer's rights in the Designs.
6. Designer represents, warrants, and covenants that Designer is fully authorized to enter into this agreement, the Designs are Designer's original creations and do not include or infringe the proprietary rights of any other party. Designer shall defend and indemnify Kim Designs and any buyer against any and all infringement claims by a third party that the Designs or any portion thereof infringe or violate any proprietary right of any other party.

7. Kim Designs agrees that it will publish the Designs on the Website, that promptly upon receipt of payment for a Design it will forward Designer's portion of such payment to Designer at the address listed above, and that Designer will generally have access to his or her Designs on the Website and will generally have the ability to post or remove Designs after the Display Period.
8. Kim Designs does not warrant that the Website will be accessible 24 hours a day, seven days a week, but Kim Designs will undertake reasonable business efforts to maintain the Website and maximize the time when the Website is fully operational.
9. THE SERVICES OFFERED ON THE WEBSITE ARE PROVIDED "AS IS" WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH DESIGNER.

10. KIM DESIGNS' TOTAL LIABILITY FOR ANY DAMAGES SUFFERED BY DESIGNER OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT, UNDER ANY WARRANTY THEORY, IN NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL COMMISSIONS RECEIVED BY KIM DESIGNS FROM SALES OF DESIGNER'S DESIGNS IN THE SIX MONTHS PRECEDING THE EVENT GIVING RISE TO ANY SUCH CLAIM. UNDER NO CIRCUMSTANCES WILL KIM DESIGNS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OF DESIGNER OR ANY THIRD PARTY, EVEN IF KIM DESIGNS HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
11. Exclusive choice of forum. Designer consents to the exclusive venue and jurisdiction of courts located within the Commonwealth of Virginia for the resolution of any dispute arising out of or in connection with the terms and conditions of this Agreement. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of laws principles.
12. This Agreement shall be binding upon and inure to the benefit of the parties and their successors, heirs and assigns.
13. This Agreement constitutes the entire agreement between the parties with respect to the Designs.

WITNESS the following signatures as of the date first written above:

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Kim Designs LLC

By: _____
Name: _____
Title: _____
Date: _____

Designer

By: _____
Name: _____
Title: _____
Date: _____