

ALIVEGA PRODUCTIONS AGREEMENT
FOR PROFESSIONAL SERVICES
AND USE OF IMAGES & AUDIO

1. **Parties; Effective Date.** This professional services and license agreement ("Agreement") is between AliVega Productions, with offices at 10611 Prospect Ave, Santee, California, 92071 ("AVP") and the entity identified in attached quote/invoice ("Client"). This Agreement is effective on the date last signed.
2. **Recital.** Description of Works to be completed for Client is set forth in the quote/invoice attached to this Agreement.
3. **Purpose of Agreement.** AVP provides professional photographic, videographic, and audio recording services and licenses copyrights in its images, audio and videos, including the Works described in the quote/invoice ("Works"). Client desires to retain the professional services of AVP and to use the Works as set forth in this Agreement.
4. **Description of Services.** AVP shall provide the professional services described in quote/invoice ("Services"). Client is entitled to send representatives to the location where AVP shoots the Works in order to provide additional input to AVP as to the "look" Client seeks to achieve in the Work; if Client does not send a representative, Client may not later reject the Works as nonconforming.
5. **Status.** AVP's relationship to Client is one of independent contractor. Nothing in the agreement shall create an employment or agency relationship, nor shall AVP act as an agent or employee of Client unless such representation is outlined in the scope of services. AVP's services are to be performed solely by AVP, or approved subcontractors, for Client pursuant to the terms of this contract.
6. **Fees.** Client shall pay (a) all fees upon receipt of invoice from AVP; (b) in advance deposits, any expenses and/or Production Charges (identified in the quote/invoice) requested by AVP; (c) a late fee of ten percent (10%) per month for all overdue amounts and all fees and expenses (including attorneys' fees) incurred by AVP to secure payment from Client of overdue amounts; (d) Production Charges associated with any re-shooting of the Works required for any reason, (e) any incurred fees due to location including but not limited to parking fees, traveling fees, food, and lodging, (f) fees for images or content acquired from a source not associated with AVP including but not limited to photography, video, vetrosopes, character generations, or audio. The license to use Works is revocable by AVP if Client fails to pay fees due.
7. **Overtime.** In the event a shoot extends beyond the allotted time in the quote/invoice, AVP may charge for such excess time of assistants and freelance staff at the rate of 1 1/2 times their hourly rates.
8. **Re-shoots.** Client will be charged one hundred percent (100%) of fees and expenses for any re-shoot required by Client. For any re-shoot required because of any reason outside the control of Client, specifically including but not limited to acts of God, nature, war, terrorism, civil disturbance or the fault of a third party, AVP will charge no additional fee, and Client will pay all expenses. If AVP charges for special contingency insurance and is paid in full for the shoot, Client will not be charged for any expenses covered by insurance. A list of exclusions from such insurance will be provided on request.
9. **Postponements.** Unless otherwise agreed in writing, Client will be charged a one hundred percent fee if postponement of the assignment occurs after AVP has departed for location, and fifty percent (50%) fee if postponement occurs before departure to location. Fees for cancellations and postponements will apply irrespective of the reasons for them, specifically including but not limited to weather conditions, acts of God, nature, war, terrorism, civil disturbance, and the fault of a third party.
10. **Cancellations.** If Client cancels this Agreement for any reason other than an incurred breach by AVP, including reasons not under the control of Client such as the weather, Client shall pay (a) all expenses incurred by AVP and all non-cancelable expenses, and (b) all professional fees earned as of the date of cancellation, and (c) one hundred percent of the Production Fee identified in quote/invoice; provided however if the notice of cancellation is given at least three (3) business days prior to the shoot, Client shall pay only fifty percent (50%) of the Production Fee.
11. **Definitions.** "Image(s)" means all visual representations furnished to Client by AVP, whether captured, delivered, or stored in photographic, magnetic, optical, electronic, or any other media. Unless otherwise specified on the front of this document, AVP may deliver, and Client agrees to accept, Images encoded in an industry-standard data format that AVP may select, at a resolution that AVP determines will be suitable to the subject matter of each Image and the reproduction technology and uses for which the Image is licensed. It is Client's responsibility to verify that the digital data (including color profile, if provided) are suitable for image reproduction of the expected quality and color accuracy, and that all necessary steps are taken to ensure correct reproduction. If the data are not deemed suitable, AVP's sole obligation will be to replace or repair the data, but in no event will AVP be liable for poor reproduction quality, delays, or consequential damages. Unless otherwise specifically provided elsewhere in this document, AVP has no obligation to retain or archive any of the Images after they have been delivered to Client. Client is responsible for sending an authorized representative to the assignment or for having an authorized representative review the images remotely during the assignment. If no review is made during the assignment, Client is obligated to accept AVP's judgment as to the acceptability of the Images.
12. **Grant of License; Rights; Liquidated Damages.** AVP retains all copyrights in the Works, unless the parties separately enter into a written assignment of copyright. The sole use granted to Client relating to the Works is set forth in the quote/invoice, including whether Client may reproduce copies, combine with other materials, digitize, post on the Web or company intranet, publicly distribute copies, or create derivative Works; the duration of such rights, and the geographic territory of use. The license may not be transferred, sublicensed, or assigned. All uses not expressly licensed are reserved to AVP. This prohibition includes any rights or privileges that may be claimed under §201(c) of the Copyright Act of 1976 or any similar provision of any applicable law. Digital files may contain copyright and other information embedded in the header of the image file or elsewhere; removing and/or altering such information is strictly prohibited and constitutes violation of the Copyright Act. Client shall use the following notice on all copies of the Works distributed or electronically posted: "© 2010 AliVega Productions. All Rights Reserved. This material may not be copied, adapted, distributed, or electronically posted without the written permission of AliVega Productions." Without electing any remedies, Client shall pay a liquidated damage fees for uses of the Works without the copyright notice and attribution set forth in this Section.
13. **Alterations.** Client may not make or permit any alterations, including but not limited to additions, subtractions, or adaptations in respect of the Images, alone or with any other material, including making digital scans unless specifically permitted on the reverse side, except that cropping and alterations of contrast, brightness, and color balance, consistent with reproduction needs may be made.
14. **Client Indemnification.** Client hereby indemnifies, holds harmless, and agrees to defend AVP and its agents from any third party claims inconsistent with the foregoing representations and warranties, and shall pay currently all expenses, fees, costs, damages, and settlements relating to such claims by reason of the liability or potential liability of AVP for or arising out of any claims for damages.
15. **Limitation of Liability for Damages.** Neither party shall be liable for indirect, special, or consequential damages arising out of this Agreement, or for loss of revenues or loss of profits, under any theory of recovery, including contract, warranty, negligence or strict liability. In no event shall AVP be liable for damages in excess of the revenues received in connection with this Agreement. Nothing in the foregoing limits direct damages, actual damages, or statutory damages to which a party may be entitled.
16. **Assumption of Risk.** Client assumes full risk of loss or damage to or arising from materials furnished by Client and warrants that said materials are adequately insured against such loss, damage, or liability.
17. **Representations and Warranties.** Client represents and warrants it (a) has the legal authority to provide AVP with materials (b) has secured

the legal permission to use the likeness, voice, and all other rights of publicity and personality of all persons appearing in the Works and shall provide a copy of such written releases to AVP, (c) shall use the Works only as set forth in this Agreement, (d) assumes all costs associated with the activities set forth and (e) shall provide AVP with copies of all materials it creates using the Works. AVP represents and warrants that all services shall be provided by an AVP professional, AVP makes no other representations or warranties, express or implied. The parties agree that if the medium or the print quality of any Works delivered by AVP are defective, AVP shall not charge Client a Creative Fee to re-shoot the Works and Client shall pay for all expenses associated with the re-shoot.

18. **Waiver of liability:** AVP shall not be liable to Client on account of any personal injuries or property damage sustained by Client in performance of services hereunder. Client shall indemnify and hold AVP harmless from all liability for personal injuries or property damage directly related to the performance of contracted services.
19. **Transfer and Assignment:** Client may not assign or transfer this agreement or any rights granted under it. This agreement binds Client and insures to the benefit of AVP, as well as their respective principals, employees, agents, and affiliates, heirs, legal representatives, successors, and assigns. Client and its principals, employees, agents, and affiliates are jointly and severally liable for the performance of all payments and other obligations hereunder. No amendment or waiver of any terms is binding unless set forth in writing and signed by the parties. However, the invoice may reflect, and Client is bound by, Client's oral authorizations for additional images, fees and expenses that could not be confirmed in writing because of insufficient time or other practical considerations. This agreement incorporates by reference the Copyright Act of 1976, as amended. It also incorporates by reference those provisions of Article 2 of the Uniform Commercial Code that do not conflict with any specific provisions of this agreement; to the extent that any provision of this agreement may be in direct, indirect, or partial conflict with any provision of the Uniform Commercial Code, the terms of this agreement shall prevail. To the maximum extent permitted by law, the parties intend that this agreement shall not be governed by or subject to the UCITA of any state. AVP is an independent contractor and not an employee. If AVP is deemed under any law to be an employee of Client, and if the Works are therefore considered made for hire under the U.S. Copyright Act, Client hereby transfers the copyright to all such Works to AVP. Client agrees to execute any documents reasonably requested by AVP to accomplish, expedite or implement such transfer.
20. **Termination.** AVP may terminate this Agreement and license if Client fails to timely pay required fees, uses the Works in any manner not expressly authorized, breaches this Agreement, or if it is subject to liquidation, bankruptcy, insolvency, merger, acquisition or other change of ownership or restructuring. Termination shall be effective ten (10) days after receipt by Client of written notice. Upon termination, Client shall promptly pay AVP all fees due through the date of termination and shall immediately discontinue use of the Works. In the event of litigation the prevailing party shall be entitled to an award of attorneys' fees and expenses. The remedies accorded AVP are cumulative and in addition to those provided by law.
21. **Disputes.** Except for Federal Jurisdiction, wherein Client hereby expressly consents to the jurisdiction of the Federal courts with respect to claims by AVP under the Copyright Act of 1976, as amended, including subsidiary and related claims, any dispute regarding this agreement shall, at AVP's sole discretion, either:(1) be arbitrated in a County of San Diego, CA, under rules of the American Arbitration Association and the laws of CA; provided, however, that irrespective of any specific provision in the rules of the American Arbitration Association, the parties are not required to use the services of arbitrators participating in the American Arbitration Association or to pay the arbitrators in accordance with the fee schedules specified in those rules. Judgment on the arbitration award may be entered in any court having jurisdiction. Any dispute involving \$5,000 or less may be submitted without arbitration to any court having jurisdiction thereof. OR (2) be adjudicated in Santee, CA under

the laws of the United States and/or of CA. (3) In the event of a dispute, Client shall pay all court costs, AVP's reasonable legal fees, and expenses, and legal interest on any award or judgment in favor of AVP.

22. **Attorney Fees Clause.** In the event of litigation relating to the subject matter of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs resulting therefrom.
23. **Severability Clause:** If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.
24. **General Provisions.** This Agreement is made and performed in San Diego County, California and shall be governed by the laws of the State of California and the copyright law of the U.S. It contains the entire understanding of the parties with respect to the use of the Works and scope of services, including any oral promises; provided, however, that AVP is allowed to rely upon any oral instructions from Client at the photo shoot which instructions are later reduced to writing. The relationship of the parties is that of independent contract and shall not be deemed to create any joint venture, association, or partnership.
25. **Modification.** In the event Client wants to change or modify any part of the Work in the agreement, Client agrees to do so in writing.
26. **Amendment Agreement.** AVP and the entity identified as "Client" have executed this Agreement, and wish to amend the terms of the Agreement through this Amendment.
27. **Section Headings.** Section headings are for reference only and are not to be misinterpreted.
28. **Entire Agreement.** This Contract represents the entire agreement between the Named Member and the Company regardless of verbal agreements this Agreement and Work is representative of the final understanding between AVP and Client.

AGREED AND ACCEPTED:

Date

Company

Name

Signature

Send Via Fax to 619) 449-3919
Or Via email to sales@AliVega.com