SURFACE PATTERN DESIGNER–AGENT AGREEMENT (FRONT)

Designer's Letterhead]

Remove all language in italics before using this form.

Agreement, this day of *[date]* **between** _____

(Hereinafter referred to as the "designer"), **residing at** _____

and (hereinafter referred to as the "agent"), **residing at** _____

_____

Whereas, the Designer is a professional surface pattern designer; and

Whereas, the Designer wishes to have an Agent represent him or her in marketing certain rights enumerated herein; and

Whereas, the Agent is capable of marketing the artwork produced by the Designer; and

Whereas, the Agent wishes to represent the Designer;

Now, therefore, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable consideration, the parties hereto agree as follows:

1. AGENCY

The Designer appoints the Agent to act as his or her representative for:

☐ **Speculative** - Direct sale of designs to buyers in varying markets, on-site via tradeshows or buyer/agent meetings.

☐ **Commissioned Work** - Securing exclusive creative work, such as market research for CAD and/or physical trend boards; original hand-rendered croquis; engineered designs, placement print, or repetitive designs; development of CAD coordinates, colorways, etc., from clients in varying markets, via agents' collaboration with the client to ensure the creative focus and production specs are met by the designer, as provided in Paragraph 6.

☐ **Off-Site Service Work** - Securing of service work from clients in varying markets. Service work is defined to include, but is not limited to, repeat, coordinate, and colorway development for designs originated by the Designer, other designers, or company archives.

☐ **Other** _____

The Agent agrees to use his/her best efforts in submitting the Designer's creative work for the purpose of making sales or securing assignments for the Designer. For the purposes of this Agreement, the term "creative work" shall be defined to include designs, repeats, colorways, and any other product of the Designer's effort. The Agent shall negotiate the terms of any assignment that is offered, but the Designer shall have the right to reject any assignment if he or she finds the terms unacceptable. Nothing contained herein shall prevent the Designer from making sales or securing work for his or her own account without liability for commissions except for accounts that have been secured for the Designer by the Agent during the period of time that the Agent represents the Designer. Further, the Designer agrees, when selling his or her creative work or taking orders, not to accept a price that is below the price structure of his or her Agent. After a period of _____ months, the Designer may remove his or her unsold creative work from the Agent's portfolio to do with as the Designer wishes.

2. CREATIVE WORK AND RISK OF LOSS, THEFT, OR DAMAGE

All creative work in any media including digital media submitted to the Agent for sale or for the purpose of securing work shall remain the property of the Designer. The Agent shall issue a receipt to the Designer for all creative work that the Designer submits to the Agent. If creative work is lost, stolen, or damaged while in the Agent's possession due to the Agent's failure to exercise reasonable care, the Agent will be held liable for the value of the creative work. Proof of any loss, theft, or damage must be furnished by the Agent to the Designer upon request. When selling creative work, taking an order, or allowing a client to hold artwork (See 7. Holding Policy) for consideration, the Agent agrees to use invoice, order, or holding forms that provide that the client may not make or retain copies of the creative work, and shall be responsible for loss, theft, or damage to creative work while being held by the client, and to require the client's signature on such forms. The Agent agrees to enforce these provisions, including taking legal action as necessary. If the Agent undertakes legal action, any recovery shall first be used to reimburse the amount of attorney's fees and other expenses incurred and the balance of the recovery shall be divided between Agent and Designer in the respective percentages set forth in Paragraph 5. If the Agent chooses not to require the client to be responsible as described herein, then the Agent agrees to assume these responsibilities. If the Agent receives insurance proceeds due to loss, theft, or damage of artwork while in the Agent's or client's possession, the Designer shall receive no less than that portion of the proceeds that have been paid for the Designer's creative work.

3. TERM

This Agreement shall take effect on the _____*[day]* of _____*[year]*, and remain in full force and effect until terminated by the Designer or Agent as provided in Paragraph 10.

4. FEES

At this time, the minimum base fees charged to clients by the Agent for speculative sales and commissioned creative work are as follows:

SPECULATIVE SALES - Based on complexity, scale, etc.

Croquis/Concepts $_____ea.

Single Design in Repeat $_____ea.

Coordinates #_____@ $_____ea.

_____

COMMISSIONED WORK - Based on complexity, scale, etc.

Croquis/Concepts: 8.5 x 11" Hand Rendered/CAD

Lead Design $_____

Coordinates #_____@ $_____ea.

SURFACE PATTERN DESIGNER–AGENT AGREEMENT (BACK)

B&W Design Development *(Upon approval of above as applicable.)*

Repeat Development:	Lead Design:	Hand $_____ CAD $_____
	Coordinate 1:	Hand $_____ CAD $_____
	Coordinate 2:	Hand $_____ CAD $_____
	Coordinate 3:	Hand $_____ CAD $_____
Engineered Design:		Hand $_____ CAD $_____
Placement Print:		Hand $_____ CAD $_____

Design Completion *(Upon approval of B&W Repeat & Full-Color, Hand-Rendered / CAD Technique Sample as applicable per above. Full-Color, Hand-Rendered/CAD Engraving Area.)*

Lead Design	$_____
Coordinate 1	$_____
Coordinate 2	$_____
Coordinate 3	$_____
Engineered Design	$_____

Colorways / CAD:	Lead Design	$_____
	Coordinate 1	$_____
	Coordinate 2	$_____
	Coordinate 3	$_____
	Engineered Design	$_____

OFF-SITE SERVICE WORK

Repeat Development:	Lead Design:	Hand $_____ CAD $_____
	Coordinate 1:	Hand $_____ CAD $_____
	Coordinate 2:	Hand $_____ CAD $_____
	Coordinate 3:	Hand $_____ CAD $_____
Engineered Design:		Hand $_____ CAD $_____
Placement Print:		Hand $_____ CAD $_____

The Agent agrees that these prices are minimum prices only and shall be increased whenever possible (i.e., when the work is a rush job or becomes larger or more complicated than agreed upon). The Designer may increase minimum prices to reflect current market rates and/or inflation, and the Agent shall honor such increases upon notice thereof. The Agent shall obtain the Designer's written consent prior to entering into any contract for payment by royalty. No discounts shall be offered to clients by the Agent without first consulting the Designer. When leaving a design with the Agent for possible sale, the Designer shall agree with the Agent as to the price to be charged if the design should bring more than the Agent's base price.

5. AGENT'S COMMISSIONS

The rate of commission for all creative work, speculative or commissioned, shall be _____%. It is mutually agreed by both parties that no commissions shall be paid on assignments rejected by the Designer or for which the Designer does not receive payment, regardless of the reasons payment is not made. On commissioned originals and service work, expenses incurred in the execution of a job, such as phone calls, shipping, etc., shall be billed to the client in addition to the fee. No Agent's commission shall be paid on these amounts. In the event that a flat fee is paid by the client, it shall be reduced by the amount of expenses incurred by the Designer in performing the assignment, and the Agent's commission shall be payable only on the fee after reduction for expenses. It is mutually agreed that if the Agent offers a client a discount for multiple creative services including creative work performed on other designers' work or clients' archives, then that discount will come out of the Agent's commission since the Agent is the party who benefits from this volume.

6. COMMISSIONED WORK

Commissioned work refers to all creative work done on a non-speculative basis. The Agent shall provide the Designer with a copy of the completed order form that the client has signed. The order form shall set forth the responsibilities of the client in ordering and purchasing artwork. To this the Agent shall add the date by which the artwork must be completed and any additional instructions that the Agent feels are necessary to complete the job to the client's satisfaction. The Agent will sign these instructions. Any changes in the original instructions must be in writing, signed by the Agent, and contain a revised completion date. It is mutually agreed that all commissioned work generated by the Designer's work shall be offered first to the Designer. Under no circumstances may a Client be authorized to engage a different designer to create works based on Designer's work. The Designer has the right to refuse such work. The Agent agrees to use the order confirmation form of the Graphic Artists Guild, or a form that protects the interests of the Designer in the same manner as that form. The order form shall provide that the Designer will be paid for all changes of original instructions arising through no fault of the Designer. The order form shall also provide that if a job is canceled through no fault of the Designer, a kill fee shall be paid by the client based on the amount of work already done and the creative work and copyrights therein will remain the property of the Designer. In a case in which the job being canceled is based on creative work owned by the client, such as a previously purchased or archived design a labor fee will be charged as outlined above and the Designers' creative work will be destroyed. If the creative work is already completed in a satisfactory manner at the time the job is canceled, the client must pay the full fee.

7. HOLDING POLICY

In the event that a client wishes to hold the Designer's work for consideration, the Agent shall establish a maximum holding time with the client. This holding time shall not exceed 5 working days. Any other arrangements must first be discussed with the Designer. The Agent agrees to use the holding form of the Graphic Artists Guild, or a form that protects the interests of the Designer in the same manner as that form. All holding forms shall be available for the Designer to see at any time.

8. BILLINGS AND PAYMENTS

The Agent shall be responsible for all billings. The Agent agrees to use the invoice form of the Graphic Artists Guild, or a form that protects the interests of the Designer in the same manner as that form. The Agent agrees to provide the Designer with a copy of all bills to clients pertaining to the work of the Designer. The Designer will provide the Agent with a bill for his or her work for the particular job. The Designer's bill shall be paid by the Agent within 1 week after the delivery of the creative work(s) or, if the Agent finds it necessary, within 10 working days after receipt of payment from the client. The terms of all bills issued by the Agent shall require payment within 30 calendar days or less. If the client does not pay within that time, the Agent must immediately

SURFACE PATTERN DESIGNER–AGENT AGREEMENT (SECOND SHEET)

pursue payment and, upon request, inform the Designer that this has been done. The Agent agrees to take all necessary steps to collect payment, including taking legal action if necessary. If either the Agent or Designer undertakes legal action, any recovery shall first be used to reimburse the amount of attorney's fees and other expenses incurred, and the balance of the recovery shall be divided between the Agent and Designer in the respective percentages set forth in Paragraph 5. The Agent agrees, whenever possible, to bill in such a way that no single bill exceeds the maximum that can be sued for in small-claims court. Under no circumstances shall the Agent withhold payment to the Designer after the Agent has been paid. Late payments by the Agent to the Designer shall be accompanied by interest calculated at the rate of 1 1/2% monthly.

9. INSPECTION OF THE BOOKS AND RECORDS

The Designer shall have the right to inspect the Agent's books and records with respect to proceeds due the Designer. The Agent shall keep the books and records at the Agent's place of business and the Designer may make such an inspection during normal business hours after providing reasonable notice.

10. TERMINATION

This Agreement may be terminated by either party by giving 30 days' written notice by registered mail to the other party. All creative work executed by the Designer not sold by the Agent must be returned to the Designer within those 30 days, and Agent shall permanently delete all copies of digital creative work. In the event of termination, the Agent shall receive commissions for all sales made or assignments obtained by the Agent prior to the termination date, regardless of when payment is received. No commissions shall be payable for sales made or assignments obtained by the Designer after the termination date.

11. ASSIGNMENT

This Agreement shall not be assigned by either of the parties hereto. It shall be binding on and inure to the benefit of the successors, administrators, executors, or heirs of the Agent and Designer.

12. DISPUTE RESOLUTION

Any disputes in excess of $_____ *[maximum limit for small-claims court]* arising out of this Agreement shall be submitted to mediation in accordance with the rules of _____ *[name of local lawyers for the arts mediation program]*. The prevailing party in any dispute resolved by litigation shall be entitled to recover its attorney's fees and costs, provided that party initiated or participated in mediation as set forth herein.

13. NOTICES

All notices shall be given to the parties at their respective addresses set forth above.

14. INDEPENDENT CONTRACTOR STATUS

Both parties agree that the Agent is acting as an independent contractor. This Agreement is not an employment agreement, nor does it constitute a joint venture or partnership between the Designer and Agent.

15. AMENDMENTS AND MERGER

All amendments to this Agreement must be written. This Agreement incorporates the entire understanding of the parties.

16. OTHER PROVISIONS

_____

_____

_____

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_____

17. GOVERNING LAW

This Agreement shall be governed by the laws of the State of

_____

18. ACCEPTANCE OF TERMS

The signature of both parties shall evidence acceptance of these terms.

In witness whereof, the parties have signed this agreement as of the date set forth above.

Designer: _____

Agent: _____

_____