

MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (“**Agreement**”) is entered into by and between DEVELOPMENT COUNSELLORS INTERNATIONAL, LTD. (“**Agency**”) and HAYWOOD COUNTY TOURISM DEVELOPMENT AUTHORITY (“**Client**”) (together the “**Parties**”, and each a “**Party**”) as of the date the last Party hereto signs this Agreement (“**Effective Date**”).

Background

Agency is a full-service marketing agency specializing in economic development and tourism marketing. Client desires to engage Agency to provide its services, and Agency desires to accept the engagement, in accordance with the terms and conditions of this Agreement.

Terms & Conditions

1. Scope of Services.

- 1.1. Agency will provide Client the services and deliverables (collectively, the “**Services**”) set forth in the proposal or scope of work document (collectively, the “**SOW**”) attached hereto and incorporated herein. Please also see the attached proposal, formally submitted by DCI through the RFP process. Should Client request Agency to perform additional services beyond the scope of those identified in the attached SOW, such additional services shall be detailed in a separate SOW or other writing executed by the Parties, which shall be subject to, and considered part of, this Agreement.
- 1.2. Client appoints Agency as its agent for all purchases of media, production costs, engagement of talent, or other services and materials required to fulfill the Agreement or produce the Work Product. Client reserves the right to cancel any such authorization, whereupon on receipt of written notice of such cancellation, Agency will take all appropriate steps to effect such cancellation, provided that Client will reimburse, and hold Agency harmless, for any costs incurred by Agency as a result.

2. Intellectual Property Ownership.

- 2.1. Subject to the limitations of this Section 2, all work, campaigns, trademarks, service marks, slogans, artwork, written materials, drawings, photographs, design and graphic materials, software code, mobile applications, or other materials that are subject to copyright, trademark, patent or other intellectual property protection that is developed or produced by Agency in fulfillment of this Agreement (the “**Work Product**”) shall be the property of the Client provided: (i) such Work Product is accepted by Client within 2 months of being proposed by Agency; and (ii) Client has paid all fees and costs associated with creating or producing such Work Product. All title and interest to such Work Product shall vest in Client as “works made for hire” within the meaning of the United States copyright laws. To the extent that any such Work Product is not considered a work made for hire pursuant to law, Agency hereby transfers and assigns all of its title, rights and interest in and to such Work Product to Client.
- 2.2. It is understood that Agency may, on occasion, license materials from third parties for inclusion in the Work Product. In such circumstances, ownership of such licensed materials remains with

the third-party licensor and subject to the terms of the applicable third-party license. Wherever possible, Agency will keep Client informed of any such limitations and Client agrees that it will be bound by the terms of such third-party license(s).

- 2.3. To the extent any pre-existing Agency property is contained in any of the Work Product (including, but not limited to, any works of authorship, inventions, know-how, and/or source identifying matter that is created, developed, or conceived by or on behalf of Agency), Agency, upon the satisfaction of the conditions in section 2.1, grants to Client a limited, royalty-free, non-exclusive, perpetual, non-assignable, worldwide license to use such Agency property solely in connection with Client's use of the Work Product as contemplated by this Agreement. Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any of Agency's trademarks, trade names, or any other proprietary or intellectual property of the Agency.
- 2.4. Agency shall be permitted to display representative copies of the Work Product in Agency's work portfolio in print, digital and online formats for Agency's promotional purposes, including the submission of any completed and published Work Product in relevant award competitions. Client grants to Agency, and Agency accepts from Client, a limited, non-exclusive license to display the completed, accepted and implemented Work Product for such purposes.

3. Client Materials.

- 3.1. Where Client has supplied to Agency any information, artwork, logos, images, copy or other written, graphic or pictorial materials (the "**Client Content**") for Agency's use in connection with the Services, Client hereby gives and grants to Agency a limited, non-exclusive license and right to utilize, display and reproduce such Client Content in the Work Product and/or in connection with the Services.
- 3.2. Client covenants that it owns or has secured all necessary rights to the Client Content, and that such Client Content does not infringe any patent, copyright, trademark, trade secret or any other proprietary or intellectual property right of any third party, including individuals whose likeness appears in the Client Content.

4. Client Approvals; Review.

- 4.1. Client shall designate in writing the individual(s) with whom Agency will communicate regarding all aspects of the Services or this Agreement. Client is responsible for providing timely reviews and approvals of the deliverables and providing timely responses to Agency inquiries relating to the Services. In the event of a delay by Client in granting any necessary authority or approval to Agency, which delay causes an increase in fees or costs associated with the Services, or a delay in the completion date of any deliverable, Client shall be solely responsible for such increased costs and delayed completion dates and agrees to pay such increase in fees and costs to Agency, including any dormancy or restart fees charged by Agency. Client will assume responsibility for any increased fees or costs for delayed work completion by third parties arising out of any delayed grant of necessary authority or approvals.
- 4.2. Client will ensure that all facts reasonably within Client's knowledge that are stated in all Client Content provided to Agency, or in any deliverables incorporating such Client Content, are

substantially true and not materially misleading. Client will have the exclusive responsibility to ensure that the materials created or developed by Agency conform to all requirements or restrictions imposed by law on Client's business. Client agrees that Agency has no obligation to conduct such due diligence or provide any regulatory compliance services or legal review of any kind for any Client Content.

5. Compensation. Client will pay fees and costs to Agency as detailed in the SOW.

6. Payment Terms

- 6.1. In the event the Parties have agreed to a billing schedule, Agency will generally send invoices on or about the 1st day of each month, and payment for the charges itemized in the invoices will be due upon Client's receipt of same. Interest will be charged at the rate of 1.5% per month on all invoices that remain unpaid 30 days after receipt by Client.
- 6.2. In the event the SOW specifies a flat project fee to be charged to Client for Agency's Services, a non-refundable deposit payment of 50% of the flat project fee is due upon signature of this Agreement, and the remaining balance is due immediately prior to release of the final delivered work.
- 6.3. In the event the SOW specifies that Client make periodic retainer payments to Agency to offset hourly fees billed by Agency, such retainer payments are due immediately upon the agreed date(s) or intervals. All retainer payments will be credited to the Client's account and reconciled with all hourly fees billed by Agency.
- 6.4. In the event the SOW specifies that Client make an advance deposit payment prior to commencement of work, or intermittent milestone payments based upon the progress of the Services, such deposit or milestone payment is/are due immediately prior to commencement of work (in the case of a deposit payment) or upon achievement of the agreed milestones (in the case of milestone payments). All deposit or milestone payments will be credited to the Client's account and reconciled with all hourly fees billed by Agency.
- 6.5. Agency will invoice Client for all media, photography buyouts, and third-party costs or fees that exceed \$25,000 **prior to** incurring such costs or fees, and Client will pay all such costs, plus Agency's prevailing administrative fees, in full upon receipt of invoice. For costs/fees that are below \$25,000, Agency will arrange for direct billing to Client for such costs or fees with appropriate documentation and no markup).
- 6.6. For all media, production services, talent engagement, or other services or materials purchased by Agency on Client's behalf, Client agrees that Agency shall be held liable for payments only to the extent proceeds have cleared from Client to Agency for such third-party purchases or expenses (sequential liability); otherwise, Client agrees to be solely liable to the media or other relevant third party for any and all expenses incurred on behalf of Client.
- 6.7. Agency's fees are based upon its prevailing hourly, flat or retainer rates for services in effect on the date of the Agreement. Agency's prevailing rates for services are subject to adjustment on a periodic basis to reflect increases in its internal costs or market conditions.

- 6.8. Agency reserves the right to delay commencement or continuation of work on a Client engagement or project until Client has remitted the required payment to Agency.
- 6.9. In the event Agency must pursue legal action to collect or recover its fees or costs from Client, Client will bear all fees and expenses, including, without limitation, attorney's fees, incurred by Agency in such recovery or collection action.
7. **Term.** Unless otherwise specified in a SOW, the term (the "**Term**") of this Agreement will commence on Sept. 1, 2024 and will continue for an initial period of 10 months unless terminated earlier in accordance with Section 8 below. The contract will be for an initial 10-month period with the option to renew for up to five additional one-year extensions.
8. **Termination.**
 - 8.1. Either Party may terminate this Agreement or any SOW for any reason on 60 days' written notice to the other Party.
 - 8.2. Either Party may terminate this Agreement or any SOW if the other Party fails to perform or otherwise materially breaches any of its obligations, covenants or representations, and fails to remedy such failure or breach within 60 days after the injured Party delivers notice to the breaching Party reasonably detailing the breach.
 - 8.3. Agency's rights, duties, and responsibilities shall continue up through the effective date of termination. In the event of termination, Client will be obligated to pay Agency for any unbilled time and materials and unreimbursed expenses actually incurred through the termination date, including digital media placements and any custom materials created on behalf of Client. Unless otherwise stated in the SOW, all media placement is non-cancelable.
 - 8.4. Upon termination of the Agreement, Agency will, upon Client's request, return, transfer and/or assign to Client: (1) all proprietary information or materials in Agency's possession or control belonging to Client, subject, however, to any rights of third parties; and (2) any contracts with third parties, including advertising media, production partners, or others, upon being duly released by Client and any such third party from any further obligations. Client shall bear the costs associated with the transfer of Client's property to Client.
 - 8.5. Expiration or termination of this Agreement shall result in the automatic termination of all SOWs then in effect. Expiration or termination of any or all SOWs shall not, by itself, result in the termination of this Agreement or any other SOW.
9. **Confidentiality and Safeguard of Party's Property.**
 - 9.1. Client and Agency each agree to keep in confidence, and to not disclose or use for its own respective benefit, or for the benefit of any third party (except as may be required for the performance of services under this Agreement or as may be required by law), any Confidential Information of the other party in its possession. Agency and Client will each take reasonable precautions to safeguard the Confidential Information of the other entrusted to it and shall not disclose the Confidential Information of one another to any third party without the authorization of the disclosing party.

9.2. "Confidential Information" shall include, without limitation, marketing, technical, financial and business information and models, names of potential customers or partners, proposed business deals, reports, plans, market projections, software programs, data, or any other confidential and proprietary information relating to the work, and all of Agency's proprietary information including original proposals, recommendations, concepts or ideation related to Client's business, and the financial terms of this Agreement. The term Confidential Information excludes: (i) any data or information that is already known by or in possession of the receiving party at the time it is disclosed to the receiving party; (ii) has become generally known to the public through no wrongful act of the receiving party; (iii) has been lawfully obtained by the receiving party from a third party without restriction on disclosure of it; (iv) is required to be disclosed by operation of law; (v) is independently developed by the receiving party without use, directly or indirectly, of the Information received from the other party; or (vi) is furnished to a third party by the disclosing party hereunder without restrictions on the third party's right to disclose the information.

9.3. All Confidential Information shall be kept confidential by the Parties following the termination or expiration of this Agreement. Agency will not use any Confidential Information of Client for any purpose other than to perform its work and obligations to Client pursuant to this Agreement.

10. Mutual Non-solicitation. During any term of this Agreement and for a period of 2 years after the completion of any work or services pursuant to it, neither Agency nor Client shall (i) contact, solicit, divert or take away the other's employees, independent contractors, vendors or consultants, whose names or identities were known by any means during the Agreement term and arising out of the Services to which the Agreement relates, (ii) attempt to cause any of the other's employees, independent contractors, vendors or consultants to refrain from working for or providing goods or services to the other; or (iii) assist any other person or persons in an attempt to do any of the foregoing. This Section 10 does not prevent either Party from issuing general solicitations or from hiring those personnel who respond to general advertisements or solicitations for employment that are not directed at the other Party's personnel.

11. Notices. Any notice shall be deemed given on the day of receipt if notice is transmitted by postal mail or commercial courier, or upon the date of transmission if transmitted electronically. Any notice required under this Agreement shall be delivered to the following addresses:

Agency: Development Counsellors International, LTD.
Attn: Susan Brake, Partner
Address: 215 Park Avenue South, Suite 1403, New York, NY 10003
Email: susan.brake@aboutdci.com

Client: Client Name
Haywood County Tourism Development Authority
Attn: Corrina Ruffieux, Executive Director
Address: 91 N Lakeshore Drive, Suite 2, Lake Junaluska, NC 28745
Email: corrina@visitncsmokies.com

12. Indemnification

- 12.1. Client agrees to indemnify and defend Agency for all damages and losses (including reasonable attorney's fees, costs and expenses) arising from any claims or actions by third parties against Agency, including those by governmental or regulatory authorities, relating to: (a) Client's breach of this Agreement, or (b) any claim for false or misleading advertising, libel, slander, piracy, plagiarism, invasion of privacy, or infringement of intellectual property based upon (i) materials furnished by Client or (ii) materials created by Agency that are substantially modified by Client. Client Content and any other information or data obtained by Agency from Client to substantiate claims made in advertising shall be deemed "materials furnished by Client."
- 12.2. Agency agrees to indemnify and defend Client for all damages and losses (including reasonable attorney's fees, costs and expenses) arising from any claims or actions by third parties against Client for piracy, plagiarism, or infringement of intellectual property based upon materials created by Agency that are contained in the Work Product, other than materials furnished or substantially modified by Client.
- 12.3. Any party entitled to be indemnified pursuant to this Agreement ("**Indemnified Party**") shall provide prompt written notice to the party liable for such indemnification ("**Indemnifying Party**") of any claim or demand that the Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement. The Indemnifying Party shall promptly undertake to discharge its obligations hereunder. Additionally, the Indemnifying Party shall employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand. The Indemnified Party shall have the right to participate in the defense of any such claim or demand, at its own expense, and may settle or compromise such claim or demand, without prejudice to its rights hereunder. The Indemnified Party shall cooperate with the Indemnifying Party in any such defense.

13. Limitation of Liability. Agency cannot accept responsibility for any alterations, including additions, modifications and deletions, caused by a third party or Client to the Work Product once completed by Agency. In the event of any claim, demand, alleged loss, or alleged damage arising out of Work Product provided by Agency to Client, Agency's total liability to the Client shall not exceed the amount of fees or other compensation paid to Agency pursuant to this Agreement. Pass through expenses such as postage and media costs shall not be considered to be fees or compensation. **UNDER NO CIRCUMSTANCES SHALL AGENCY BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE.**
14. Disclaimer of Warranty. Agency warrants that it will perform the Services in accordance with industry standards and using reasonable care and skill. **THESE WARRANTIES ARE CLIENT'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITH RESPECT TO MARKETING SERVICES, AGENCY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF EFFECTIVENESS, SPECIFIC BUSINESS RESULTS, OR SPECIFIC QUALITY OR QUANTITY OF RETURN OR RESPONSE.**
15. ADA Compliance. Where Agency's scope of work includes the design and development and/or maintenance of Client's website or app, Client acknowledges and understands that, unless otherwise

provided for in an applicable SOW, Agency's scope of work does not include ensuring compliance with the Americans with Disabilities Act website accessibility requirements.

16. Data Privacy Regulation Compliance. Where Agency's scope of work includes the use of Client data or information, or consumer information assembled or processed by Client (collectively, "**Data**"), Client acknowledges and understands that, unless otherwise provided for in an applicable SOW, Agency's scope of work does not include ensuring compliance with U.S. federal or international data privacy regulations. Client shall be responsible for providing any and all specifications concerning use of any Data provided to Agency by Client. Without limiting any indemnification obligation of Client, Client further agrees it will indemnify and hold Agency harmless from Client's negligence or intentional failure to comply with applicable privacy or data security laws and regulations, rules, or industry codes and guidelines, including the CCPA or GDPR, relevant to any Data in possession or control of Agency related to a SOW between the parties.
17. Right to Engage in Other Activities. Client acknowledges and agrees that Agency may provide services of the same or a similar nature as the Services for one or more third parties during and after the term of this Agreement and that, except as expressly agreed to by the Parties in writing, nothing in this Agreement will operate to impair, restrict, limit, or prohibit Agency from providing any such services.
18. Entire Agreement; Modifications. This Agreement constitutes the sole Agreement of the Parties hereto and supersedes all prior agreements, promises, negotiations, or representations between the Parties not expressly stated herein. All subsequent modifications shall be in writing and signed by the Parties.
19. No Joint Venture. Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between the Parties. Agency is, and at all times will continue to be, an independent contractor.
20. Severability. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision hereof, each of which will remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner materially adverse to any Party. Further, it is the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion thereof, to be illegal, void, or unenforceable because of the duration of such provision, such court shall reduce the duration, and, in its reduced form, such provision shall then be enforceable and shall be enforced.
21. Force Majeure. Agency shall not be deemed in default of this Agreement to the extent that its performance is prevented or delayed due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance or act of terror, disruption of the public markets, war or armed conflict, pandemic, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.
22. Governing Law; Dispute Resolution. This Agreement shall be governed by and interpreted in accordance with the laws of the state of New York without regard to its conflict of laws principles. Jurisdiction and venue for resolution of all disputes arising out of this Agreement shall be in New York County, New York.

AGREED TO BY:

**Development Counsellors
International, LTD.**

By:



Name/Title: Susan Brake

Date: August 28, 2024

**Haywood County Tourism
Development Authority**

By:

Name/Title: Corrina Ruffieux, Executive Director

Date: