TERMS AND CONDITIONS

TIME FOR PAYMENT

Payment is due within either 7 or 30 days of receipt of the invoice. A ½% monthly service charge will be billed for late payment. Any advances or partial payments shall be indicated under “Specific Commissions Terms and Conditions”.

DEFAULT IN PAYMENT

The Client shall assume responsibility for all collection of legal fees necessitated by default in payment in addition to the full original fee and any late service charges as listed above.

GRANT OF RIGHTS

The grant of rights is conditioned on receipt of full payment.

EXPENSES

The Client shall reimburse the Illustrator for all expenses arising from the assignment.

ESTIMATES

The fees and expenses shown are minimum estimates only. Final fees and expenses shall be shown when the invoice is rendered. The Client's approval shall be obtained for any increases in fees or expenses that exceed the original estimate by 15% or more.

SALES TAX

The Client shall be responsible for the payment of sales tax, if any such tax is due.

CANCELLATION

In the event of cancellation or breach by the Client, the Illustrator shall retain ownership of all rights of copyright and the original artwork, including sketches and any other preliminary materials, and the Client shall return all copies and permanently delete all digital copies thereof. The Client shall pay the Illustrator according to the following schedule: 50% of the original fee if canceled after

preliminary sketches are completed, 100% if canceled after completion of finished art.

ALTERATIONS

Alterations to artwork shall not be made without consulting the Illustrator, and the Illustrator shall be allowed the first option to make alterations when possible. After acceptance of artwork, if alterations are required, a payment shall be charged over the original amount. Alterations not due to the fault of the Illustrator shall be billed separately.

CREDIT LINES

On any contribution for magazine or book use, the Illustrator shall receive name credit in print. Name credit shall be given with all other types of use.

Credit line shall be in either of the following forms:
© [date] Emma Hernandez
© [date] Emma Hernandez AKA Mocha

RETURN OF ARTWORK

The Client assumes responsibility for the return of the artwork in an undamaged condition within 30 days of first reproduction. Client shall return all copies and permanently delete all digital copies of the artwork, including sketches and any other preliminary materials within 30 days after expiration of Client's usage rights.

LOSS OR DAMAGE TO ARTWORK

The value of lost or damaged artwork is set at no less than 100% of the original cost.

UNAUTHORIZED USE

The Client will indemnify the Illustrator against all claims and expenses, including reasonable attorney's fees, arising from uses for which no release was requested in writing or for uses exceeding the authority granted by a release or the license granted herein.

WARRANTY OF ORIGINALITY

The Illustrator warrants and represents that, to the best of her knowledge, the work assigned hereunder is original and has not been previously published, or that consent to use has been obtained consistent with the rights granted to Client herein. That all work or portions thereof obtained through the undersigned from third parties are original, and that consent to use has been consistent with the rights granted to Client herein; and that the Illustrator has full authority to make this Agreement; and that the work prepared by the Illustrator does not contain any unlawful matter. This warranty does not extend to any uses that the Client or others may make of the Illustrator's product that may infringe on the rights of others. Client expressly agrees that it will hold the Illustrator harmless for all liability caused by the Client's unauthorized use of the Illustrator's product to the extent such use infringes on the rights of others.

LIMITATION OF LIABILITY

Client agrees that it shall not hold the Illustrator or her agents or employees liable for any incidental or consequential damages that arise from the Illustrator's failure to perform any aspect of the Project promptly, regardless of whether such failure was caused by intentional or negligent acts or omissions of the Illustrator or a third party.

DISPUTE RESOLUTION

Any disputes in excess of $5000 arising out of this Agreement shall be submitted to mediation in accordance with the rules of The Florida Bar. The prevailing party in any dispute resolved by litigation shall be entitled to recover its attorneys' fees and costs, provided that the party initiated or participated in mediation as set forth herein.

REGARDING ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING

None of the images, artworks, videos, or text created by the Illustrator may be used to train or be used in conjunction with anything related to Artificial Intelligence (AI) or Machine Learning (ML) technologies.

SPECIFIC TERMS AND CONDITIONS

AMENDMENT: TIME TO PAYMENT

Herein amends and adds to the Time to Payment section of page 1 if made applicable in the initial contract with Client.

Client agrees to pay the full total amount agreed upon in two halves, firstly at the start of the service agreement, and secondly upon completion of artwork. Each iteration of payment must be paid in full within a week of invoice delivery unless otherwise specified by "Payment Plan Additional Terms" inclusion into Specific Commission Terms and Conditions. If default upon payment happens, Client will be charged 1/2 price for every month in default, as originally specified in "Time to Payment".

EDITS

For commissions that do not involve extensive iterative correspondence, which will be qualified under the "Correspondence" terms, Client and Illustrator agree to participate in process-dialogue regarding editing and modification to Artwork before final Artwork acceptance on agreed-upon deadline. If this process dialogue exceeds two edits (defined as separate instances of taking and applying Client feedback) per stage of illustration (thumbnail, sketch, value study, color study) or equal to or exceeding five hours of process work, it will be categorized as applicable to the "Correspondence" terms. If Client does not participate in conversation for alteration process of the Artwork during its creation, then Client will be subject to an additional fee of 1/3 the initial Price for alterations to Artwork if any are requested after the original date of Artwork acceptance on the agreed upon deadline.

CORRESPONDENCE

Commissions and jobs that require an extensive iterative process, also defined as in-depth conceptualization/ideation/exploration work exceeding two iterative explorations or equal to or exceeding 5 hours of concepting work, between Illustrator and Client will be subject to an additional "Correspondence Fee" on top of the agreed-upon commission or job price. The Correspondence Fee will only be applicable if there was no otherwise or prior contractually agreed-upon number of edits, hours spent, or specified project scope that would encompass extensive iterative processes.

AMENDMENT: GRANT OF RIGHTS

Full copyright retained by Illustrator unless specified and paid for within the Invoice by Client. Licensure will be detailed therein as well. If Artwork is reproduced outside of granted licensure, Client will be billed for all additional applicable rights and licensure beyond original granted rights to Client. If additional payment is not fulfilled within 7 days, all licensure and grant of rights to Client will be void.

REGARDING ARTIFICIAL INTELLIGENCE (AI)/MACHINE LEARNING (ML)

Illustrator reserves the rights, and Client has no rights to, reproduce and/or otherwise use the Property or Artwork in any manner for purposes of training artificial intelligence or machine learning technologies to generate images, including without limitation, technologies that are capable of generating images in the same style or genre as the Property or Artwork. Nor does Client have the right to sublicense others to reproduce and/or otherwise use the Property or Artwork in any manner, including for purposes of training artificial intelligence or machine learning technologies to generate images.

Client has no rights to reproduce, publish and/or use any of the Property or Artwork in conjunction with any work, project, document, or game, in any state of completion, that contains images generated by artificial intelligence or machine learning technologies.

The Client does not have the right to feed or scrape the thumbnails, sketches, value studies, color studies, final illustrations, or compositional designs of the Property or Artwork into any artificial intelligence or machine learning technology.

Failure to comply with these terms, or the exercise of rights not granted, will result in the surrender of all rights to the infringing project, work, document, or game to the Illustrator.