

## WHAT DO THESE TERMS AND CONDITIONS SAY?

The following is a brief and basic summary of major points in each section of these Terms and Conditions. This summary is not part of the Agreement and is not intended as a substitute for legal advice. You are encouraged to read the entire Agreement and to consult with an attorney if you have legal questions. In other words, you shouldn't rely on this summary as a complete explanation of these Terms and Conditions.

- **Section One** – discusses the services to be performed by the Provider, your rights to the Client Content, and what Provider is (and is not) responsible for.
- **Section Two** – discusses the rights and responsibilities of the Parties. We also ask that you honor the time and energy we've put into training our team, and that you do not hire away any of our team unless we first come to an agreement on that.
- **Section Three** – discusses the relationship of trust and confidence between us, in that we will not disclose the confidential information to outsiders that is shared between us except as required in the normal course of business or as otherwise agreed. We also analyze certain data in order to learn how we can improve both quality and delivery of service.
- **Section Four** – discusses payment terms, including due date and continuation of responsibility for charges.
- **Section Five** – discusses how our professional relationship begins and can end. After the Initial Term (as defined below), we can both terminate the Agreement at any time upon 30 days' notice, in addition to other rights. We do require that the Committed Cost be paid in full though.
- **Section Six** – discusses that we take our commitment to providing an excellent experience seriously. However, sometimes things like technical challenges and internet outages can create obstacles for us. We cannot be responsible for these matters. In addition, we will do our best to make sure your brand is represented well. That does not mean that we guarantee any particular result. Finally, we will use our best judgment to make your branding as unique as is feasible. But, we aren't attorneys and don't pretend to be ones. Therefore, you should always consult an intellectual property attorney before deploying any copy, logos, trademarks, tradenames, trade dress, video, photography, or other marketing devices to ensure that your branding doesn't infringe on the rights of others.
- **Section Seven** – discusses limitation on our liability to you arising from our relationship.
- **Section Eight** – discusses general provisions (items that our attorney thinks are important to include), such as agreeing that you've had an opportunity to read and review this Agreement with counsel; that this document covers our entire agreement (i.e., no 'side agreements'); and that we will only amend this Agreement in writing (vs. a verbal conversation).
- **Section Nine** – discusses our ability to quickly make changes to your integrated vendor accounts by agreeing to standard terms and conditions on your behalf that are required before signing up with a vendor.



## **TERMS AND CONDITIONS**

PLEASE READ THIS ENTIRE DOCUMENT CAREFULLY. BY SIGNING A PROPOSAL, YOU EXPRESSLY AGREE TO AND UNCONDITIONALLY ACCEPT THESE TERMS AND CONDITIONS. IF YOU DO NOT FULLY AGREE TO THESE TERMS AND CONDITIONS, PLEASE DO NOT SIGN A PROPOSAL.

### **Definitions:**

- “Administrator” refers to and means the person designated by Client, from time to time, to have access provided by Provider as contemplated herein.
- “Agreement” refers to and means: (a) these Terms; (b) any written Proposal that the Client has signed or electronically accepted which references these Terms; and (c) any subsequent modifications to these Terms or a Proposal which are permitted herein. The Agreement is made and entered into between Provider and Client, but subject to Guarantor’s obligations set forth herein. There are no intended third-party beneficiaries under this Agreement.
- “Cause” refers to and means that Provider has not performed the Services as specified in the Proposal. Cause shall not include: (a) any delay on the part of the Client that hinders Provider’s ability to perform the Services, and (b) any subjective determination of the Client regarding the Services.
- “Client” refers to and means the person or entity named as “Client” in a Proposal. For purposes of Provider’s obligations to Client, it shall be liable only to the person or entity so named therein. However, for purposes of Client’s obligations to Provider, Client shall be jointly and severally liable to Provider along with the Guarantor.
- “Client Content” refers to and means any web design materials, web pages, video or photographic media, logos, marketing materials (including concepts, ideas, and techniques), branding materials, tangible or intangible assets, or other things which are created or delivered by Provider as part of the Services within the scope of a Proposal. For the sake of clarity, Client Content does not include any Raw Work Product.
- “Client Investment” refers to and means the sum set forth in a Proposal to be paid by Client to Provider pursuant to the “Payment Schedule” set forth therein (if any), including the Committed Cost, hosting fees (if any), and marketing fees.
- “Committed Cost” refers to and means all fees in a Proposal, as well as any other services which have been financed into the Client Investment (such as media production), and including any discounts, incentives, or bonus services specified in a Proposal. In the event of early termination, Committed Costs will include the value of any discounts, incentives, and/or bonus services received during the Initial Term specified in the Proposal. However, notwithstanding the foregoing, Committed Cost shall not include associated website hosting or maintenance fees.
- “Guarantor” refers to and means the person signing a Proposal on behalf of the Client. For purposes of Client’s obligations to Provider, Guarantor shall be jointly and severally liable to Provider along with the Client.
- “Party”, whether capitalized or not, refers to and means either Client or Provider.
- “Parties”, whether capitalized or not, refers to and means both the Client and Provider collectively.



- “Proposal” refers to and means a document or email signed or accepted by Client specifying the Client Investment or other sum to be paid by Client, as well as the Services to be performed by Provider in consideration for receipt of the Client Investment or other specified sum. “Proposal” also refers to and means those future documents or emails which may be signed or accepted by Client from time to time memorializing additional Services to be performed by Provider and the fees to be paid by Client in consideration therefor, regardless of whether such documents are entitled as a ‘proposal’.
- “Provider” refers to and means exclusively Paper Jacket, LLC or its successor and assigns, including without limitation an entity purchasing substantially all of the assets of Paper Jacket, LLC.
- “Raw Work Product” refers to and means any video footage, photography, project files, audio files, and/or any other project assets or work product, whether in raw form, partially edited form, fully edited form or otherwise, which is not included in the final Client Content delivered to the Client pursuant to the Proposal.
- “Services” refers to and means the various branding, marketing, web development, video, photography, consulting, design, advertising, or related services to be performed by Paper Jacket, LLC as described in the initial Proposal and authorized modifications made thereto as permitted in this Agreement. “Services” also refers to and means those branding, marketing, web development, video, photography, consulting, design, advertising, or related services which may be requested by Client and performed by Provider from time to time which are made subject to these Terms and expressly incorporate the Agreement by reference.
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- “Terms” refers to these Terms and Conditions.
- “We” “Us” and “Our”, as used in a Proposal, and whether capitalized or not, refers to and means Provider.
- “You” and “Your”, as used in a Proposal, and whether capitalized or not, refers to and means the Client.

### **Entire Agreement:**

The Agreement shall constitute the entire, final, and exclusive agreement and understanding between the Provider, Client, and Guarantor with regards to the subject matter hereof. The provisions of these Terms, which may be amended by Provider by providing at least thirty (30) days’ prior written notice, hereby supersede any prior understanding, representation, or agreement between the Parties, whether written or oral, express or implied, which is inconsistent with or contrary to the provisions hereof. In the event of a conflict or inconsistency between the provisions of these Terms and the provisions of a Proposal, the provisions of these Terms shall control, unless the Proposal specifically references the inconsistency with these Terms and expressly provides that the Proposal shall control.

### **1. PROVIDER’S SERVICES**

1.1 During the Term (as defined below), and provided that Client is not in default hereunder, Provider will use reasonable efforts to perform the Services in a commercially reasonable manner. Client understands and acknowledges that Provider has not investigated whether any Client Content will infringe upon the rights of third parties. Accordingly, it is Client’s sole responsibility to verify that the use, marketing, advertising, transmittal, and reproduction of all Client Content will not infringe upon the rights of any person or entity.

1.2 Client understands and agrees that Client shall not own the Client Content and shall not have the right to use the Client Content pursuant to this license, unless and until the Committed Cost is paid in full. Subject to



Section 2.3, until such time, and provided that Client is not in default hereunder, Provider grants to Client a non-exclusive, non-transferrable, and non-sublicensable license to promote, display, transmit, publish, use, and access the Client Content. In the event of default by Client, the foregoing license shall automatically terminate upon notice to Client. For purposes of clarity, the termination of this Agreement under this Section 1.2 shall be synonymous with, and shall serve as the simultaneous termination of the foregoing license. Subject to Section 2.3, once the Committed Cost is paid in full, the license granted under this Section 1.2 becomes irrevocable.

1.3 Client acknowledges that there are security risks inherent in Provider's performance of the Services, transmittal of Client Content or Raw Work Product to and from Provider, and maintenance, hosting, and use of Client's website. Accordingly, Client releases, waives, and discharges all claims, demands, and causes of action, whether at law or in equity, against all of the Provider Parties (as defined below) from any and all liability for any security breach, theft, conversion, loss, misuse, or hacking of or related to the Services, the Client Content, the Raw Work Product, the client's Website (whether maintained by Provider or not), and any of the platforms used by Provider to deliver, promote, host, store, or market Client Content or Raw Work Product. In addition, and without limiting the generality of the foregoing, Client expressly acknowledges that, if its website is not regularly and properly maintained, Client may be exposed to increased security risks and vulnerabilities.

1.4 Provider may grant Administrator access to the website content management system (CRM) upon request of Client. Should Client have Administrator access to their website, Provider will continue to maintain the website, however, Provider shall not be liable if the website or any function of the website, to include data loss, breaks as a result of Client's Administrator access and Client hereby releases, waives, and discharges Provider Parties from all claims, demands, and causes of action, whether at law or in equity for such liability. Client shall be responsible for, and may be billed separately for, any fees above and beyond Provider's normal hosting/maintenance fees to resolve any such issues.

1.5 For an additional cost as documented in a separate written agreement (subject to review and proposal by Provider based upon size and scope), migration of data and hosting can be offered. Migration will include (a) preparation of website and related content, (b) packaging and/or transfer of plugins and licensing as necessary, (c) perform testing, and (d) interface with new hosting provider and cooperate with site transfer. Client shall be responsible for all costs, fees, and expenses associated with the site transfer, as well as new hosting service. Client understands and agrees (i) that such migration shall relate to all things related to said website, its hosting, and maintenance, (ii) that upon such transfer Provider will no longer be hosting or maintaining the website and as such Provider cannot guarantee the integrity and functionality of said website, (iii) Client shall assume all responsibility for hosting and maintaining said website and Provider shall have no liability to Client whatsoever regarding said website once said transfer is complete, (iv) Client hereby releases, waives, and discharges Provider Parties from all claims, demands, and causes of action, whether at law or in equity from any liability whatsoever regarding said website once said transfer is complete, and (v) that should Client request any services from Provider for any issues that arise regarding said website once said transfer is complete, Client understands and agrees that any such services will be a separate and stand-alone project from the Agreement and as such will be billed accordingly.

1.6 Client expressly releases Provider, and hereby waives all claims and causes of action against Provider, whether at law or in equity, now or hereafter acquired, for lost profits or for consequential, incidental, punitive, or any other form of damages arising from or relating to: (i) use, transmittal, or reproduction of Client Content (whether authorized or unauthorized), (ii) delays in Provider's provision of Client Content to Client or any third parties designated by Client (or delays in Client providing information, input, or approvals to Provider necessary to perform the Services, or (iii) any security breach, theft, conversion, or hacking related to the Services, the Client Content, the Raw Work Product, or any of the platforms used by Provider to deliver, promote, host, store, or market Client Content.



1.7 In the event of Client's failure to provide, or delay in timely providing any necessary information, input, or approvals to Provider necessary to the Provider's performance of Services, the Client acknowledges that such failure or delay will necessarily result in the delay in completion of such Services. Furthermore, the Client acknowledges and agrees that Client Investment fees shall continue to be charged to Client during such period of time, and Client will remain fully liable therefor.

1.8 Provider shall own all rights and interest in Raw Work Product, unless Provider agrees to deliver any or all of the Raw Work Product to Client, for an additional agreed-upon cost (subject to review and proposal by Provider based upon size and scope). Subject to the terms of a separate written agreement (or amendment to a Proposal), the transfer of Raw Work Product may include (a) preparation of files, (b) packaging and/or transfer of files, and (c) shipping, handling, and insurance to facilitate the physical delivery of files if required. Unless otherwise provided in the written agreement, Client shall be responsible for all costs, fees, and expenses associated with the transfer and storage of the Raw Work Product, and such transfer is not exclusive to Client in that Provider still has the right to use non-identifying content. Client understands and agrees that (i) upon such transfer Provider may no longer host, maintain, and/or store files and as such Provider cannot guarantee the integrity or recovery of files again in the future, (ii) Client shall assume all responsibility for hosting, maintaining, and/or storing said files and Provider shall have no liability to Client whatsoever regarding said files once said transfer is complete, (iii) Client hereby releases, waives, and discharges Provider Parties from all claims, demands, and causes of action, whether at law or in equity from any liability whatsoever regarding said files once said transfer is complete, and (iv) if Client requests any services from Provider for any issues that arise regarding said files once said transfer is complete, Client understands and agrees that any such services will be a separate and stand-alone project from the applicable Proposal and as such, will be billed accordingly.

1.9 Client understands and agrees that, unless otherwise specified in the Proposal: (a) once transferred to Client, Provider has no duty to retain and store and may purge and delete any Client Content, (b) unless transferred to Client as provided in this Section 1.9, Provider has no obligation to retain or store any Raw Work Product and may purge or delete any or all Raw Work Product, at any time in Provider's sole discretion, and (c) the right to purge and delete provided in subsections (a) and (b) apply to any Client Content and Raw Work Product that were created prior to the amendment of these Terms.

## **2. RESTRICTIONS & RESPONSIBILITIES**

2.1 SECTION 1 HEREOF (AND ITS SUBPARTS) SETS FORTH THE SOLE AND EXCLUSIVE OBLIGATION OF PROVIDER TO CLIENT WITH REGARDS TO PERFORMANCE OF THE SERVICES AND PROVISION OF CLIENT CONTENT. PROVIDER HAS MADE NO REPRESENTATION, WARRANTY, CLAIM, OR GUARANTEE REGARDING THE EFFECT, OUTCOME, OR RESULTS TO BE REALIZED OR OBTAINED BY CLIENT THROUGH USE OF THE SERVICES OR CLIENT CONTENT, AND SPECIFICALLY DISCLAIMS ALL OF THE SAME. PROVIDER DOES NOT GUARANTEE OR WARRANT, AND EXPRESSLY WAIVES AND DISCLAIMS ANY GUARANTEE OR WARRANT, WHETHER EXPRESS OR IMPLIED, WHICH MAY BE APPLICABLE TO THE SERVICES, THE CLIENT CONTENT, OR THE PROVIDER'S OBLIGATIONS UNDER A PROPOSAL OR THIS AGREEMENT.

2.2 Client shall not, either directly or indirectly, at any time during or after the Term, nor shall Client permit any of Client's agents, employees, companies, partners, affiliates or subsidiaries, nor the agents, employees, officers, or contractors of any of them, notwithstanding any other provision of the Agreement to the contrary, to do or attempt to do any of the following: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the platforms, tools, or software used by Provider to deliver the Services or Client Content, or (ii) modify, translate, or create derivative works based upon any of the foregoing (except to the extent expressly permitted by Provider or the author of such platforms, tools, or software).



2.3 Client's license to use the Client Content provided in Section 1.2 above is limited by Provider's license rights to intellectual property used in connection with the creation of the Client Content and Client shall have no greater rights in such intellectual property than Provider has therein. Client may not assign its license without Provider's prior written consent, which may be withheld only in Provider's reasonable discretion. Provider shall have exclusive rights to, and ownership of any and all software, applications, inventions, methods, techniques, practices, content, know-how, functions, or other technology arising from or relating to any derivative work created by Provider based on Client Content. Furthermore, and except as otherwise provided herein, Client grants to Provider a non-exclusive, non-transferrable, irrevocable, and non-sublicensable license to display and use Client Content (including logos, designs, and branding which may be subject to Client's trademark or copyrights), in any manner whatsoever, including, but not limited to, in connection with its business marketing and advertisements, provided, however, that upon Client request in writing, at any time, that Provider not use Client Content that specifically identifies Client, then Provider shall stop such use from the time of Client's request. Unless specifically agreed to by Provider in a Proposal, Provider is not responsible for the hosting, maintaining, and/or storing of any Client Content, including any Raw Work Product. In any event, and even if Provider is hosting, maintaining, and/or storing said content, Provider shall under no circumstances be held liable for any data loss relating to, interruption in use of, or theft, hacking, corruption, or infringement of any Client Content or Raw Work Product.

2.4 Client hereby expressly covenants to defend, indemnify, and hold harmless Provider and its agents, employees, officers, successors, subsidiaries, parents, affiliates, and assigns (collectively, "Provider Parties") from and against all claims, causes of action, costs, fees, fines, expenses, losses, and liabilities of any and every kind whatsoever, including attorney's fees and court costs, which are brought against, sought from, alleged to be the responsibility or fault of, or are incurred by any of the Provider Parties, and which arise from, or in any way relate to: (i) any negligence or intentional wrongful acts by or on behalf of Client or its employees, agents, contractors, officers, subsidiaries, affiliates, or assigns, (ii) the creation, production, marketing, advertising, or use of any Client Content, (iii) the breach or threatened breach of any provision of the Agreement by Client, (iv) any act or thing for which any of the Provider Parties are released under this Agreement, or (v) any use, misuse, reproduction, or alteration of any Client Content by any person or entity, regardless of whether any of the foregoing was foreseeable or known to any of the Provider Parties.

2.5 Client acknowledges that Provider has invested considerable time, effort, and money into recruiting and training its employees and independent contractors who carry out performance of the Services and delivery of Client Content during the Term ("Protected Personnel"). Accordingly, the Client shall not, during the Term or within the six (6) month period immediately thereafter, either directly or indirectly, either on Client's behalf or in assistance to any third party, do or permit any other person to do any of the following: (i) induce, recruit, solicit, hire, employ, contract with or otherwise engage in any way with any Protected Personnel for the purpose of performing services similar in nature to the Services, or (ii) solicit, induce, recruit, encourage, or entice any Protected Personnel to leave the employ or engagement of Provider, or having knowledge that such actions will cause, either directly or indirectly, any Protected Personnel to leave the employ or engagement of Provider.

2.6 Client acknowledges that compliance with the terms of paragraph 2.5 above is necessary to protect the Provider's legitimate business interests in retaining qualified personnel. Furthermore, Client understands and agrees that a breach of paragraph 2.5 above will damage the Provider in an amount which is difficult, if not impossible, to calculate. Accordingly, in the event the Client either (i) desires to take any action which would be considered a breach of paragraph 2.5, or (ii) actually takes action which constitutes a breach of paragraph 2.5, then Client shall pay to Provider within thirty (30) days of demand therefor a sum equal to fifty percent (50%) of the current total annual gross salary of the applicable Protected Personnel who has left or desires to leave the employ or engagement of Provider.



2.7 Client acknowledges that Provider requires administrative access to a variety of accounts owned or controlled by Client in order to perform Provider's Services. Accordingly, during the Term Client will ensure Provider has administrative access to all accounts to which Provider requests access in order to perform its Services. If such administrative access does not exist, Client expressly authorizes Provider to create administrative accounts, permissions, and access as reasonably necessary to perform the Services and develop the Client Content. While Provider may assist Client in managing its related service accounts (such as newsletter management, advertising, and the like), Client will be responsible for opening and maintaining such accounts. In addition, the Provider has the absolute right to, at any time, require Client to open and maintain their own service account (in the event that the Provider is at that time in control of an account opened for or on Client's behalf, but owned by Provider).

### **3. CONFIDENTIALITY; PROPRIETARY RIGHTS**

3.1 Both parties may, from time to time hereafter disclose to the other party certain business, technical, or financial information relating to that party's business, software, systems, products, or processes (hereinafter referred to as "Proprietary Information"). Proprietary Information of Provider also includes all non-public information regarding features, functionality, and performance of its services, design process, and Client Content. Accordingly, each party hereby agrees: (i) to take commercially reasonable precautions to protect such Proprietary Information of the other party, but in every event to employ at least the same or better methods for safeguarding the Proprietary Information of the other party that the first party employs for its own Proprietary Information; and (ii) not to use, disclose, divulge, or reveal, or permit to be disclosed, divulged, or revealed any Proprietary Information of the other party, except as otherwise permitted herein. Notwithstanding the foregoing, each party's non-disclosure obligations hereunder shall not apply with respect to any Proprietary Information of the other party which is or has become generally available to the public, or which is required to be disclosed by the first party pursuant to applicable law.

3.2 Notwithstanding anything in the Agreement to the contrary, Provider shall have the right to collect and analyze data and other information relating to the provision, use, and performance of various aspects of the Services and Client Content and its delivery, use of, and marketing to Client's customers. The Provider shall be permitted (both during and after the Term) to do any of the following: (i) use such information and data to improve and enhance its business operations and for other development, diagnostic, and corrective purposes in connection with the Services and other Provider offerings, and (ii) disclose to third parties such data in connection with its business.

### **4. PAYMENT OF CLIENT INVESTMENT**

4.1 Client shall pay to Provider the Client Investment as set forth in the initial Proposal and pursuant to the Payment Schedule included therein. In addition, Client shall pay to Provider when due the sum owed for any additional Services which may be requested by Client and performed by Provider from time to time after the date of the initial Proposal, which additional Services are made subject to these Terms, and which expressly incorporate this Agreement by reference. Time is of the essence with regards to all of Client's payment obligations hereunder. If a particular Payment Schedule or due date is not specified in the initial Proposal or subsequent written document memorializing additional Services to be performed, then the due date shall be considered the date of our agreement as to Services and must be paid in advance prior to beginning such Services.

4.2 In the event that any payment by Client is returned or dishonored for lack of sufficient funds, Client shall promptly reimburse Provider upon demand the greater of: (i) any NSF fee charged to Provider as a result thereof, or (ii) Thirty-Five Dollars (\$35.00). If Client chooses to make payment by debit card, credit card, or ACH bank



withdrawal, Client shall ensure that a current card/bank account information is kept on file with Provider at all times. Provider is entitled to charge any of the debit card(s), credit card(s), or bank account(s) on file which have been given to Provider as payments become due, and without advance notice to Client. If more than one debit card, credit card, or bank account has been provided to Provider, and one of the foregoing is canceled or a charge thereon is declined, Provider may charge any other debit card, credit card, or bank account on file without advance notice to Client. The foregoing constitutes formal payment authorization, and no further or separate instrument shall be required.

4.3 Provider reserves the right, in its sole and absolute discretion, and at any time, to require that future payments be made by Client via wire transfer, ACH transfer, or certified check; provided that Client shall be solely responsible for payment of all fees (including, but not limited to merchant and transfer fees or certified check fees) related thereto. Provider shall in no way be liable for theft, hacking, misappropriation, or security breaches of Client's payment, bank account, debit card, or credit card information.

4.4 Provider may, if set forth in the initial Proposal, allow the Committed Cost to be paid in installments by Client along with charges for other services. However, Client understands and acknowledges that the Committed Cost is due to Provider regardless of the performance or non-performance of, payment or non-payment for, or termination of other Services (i.e., marketing and hosting) provided by Provider to Client. Furthermore, all portions of the Client Investment, Committed Costs, and other fees and costs paid hereunder are non-refundable unless otherwise expressly and separately agreed to in writing by Provider.

4.5 In addition to, and not to the exclusion of any other remedy Provider may have, in the event of nonpayment by Client of any amount owed when due, Provider may suspend hosting, marketing of, and access to Client Content (including, but not limited to Client's website).

4.6 The Client acknowledges that, due to periodic increases in the costs incurred by Provider associated with the Services, a price increase by the Provider may be necessary. If there is a specified Initial Term in the Proposal, Provider may, without advance written consent from Client, increase the Client Investment prior to any Renewal Term (as defined below) and any , with at least thirty (30) days' written notice. For clarity, Provider may not increase the Client Investment during the Initial Term or during any Renewal Term. If there is not a specified Initial Term in the Proposal, Provider may, without advance written consent from Client, increase the Client Investment up to two (2) times per calendar year with at least 30 days' prior written notice.

## 5. TERM AND TERMINATION

5.1 The term of this Agreement shall be as designated in the Proposal and shall continue for the entire period specified in the Proposal, (the "Initial Term"), unless terminated by either party as expressly permitted herein. Unless terminated prior to the end of the Initial Term, the Agreement shall automatically renew for successive terms equal to the Initial Term, each a "Renewal Term", subject to the termination notice provisions below. The Initial Term together with any Renewal Terms is herein referred to as the "Term". Notwithstanding the foregoing, Term shall include any period of time that Provider hosts Client's website. Notwithstanding the foregoing, if the Proposal fails to designate the term, the term of this Agreement will be presumed to end once all obligations of both Parties under the Proposal, including without limitation payment by Client, are completed or waived in writing. Notwithstanding anything to the contrary contained herein, and whether occurring during the Initial Term or thereafter, The Provider may terminate this Agreement at any time upon written notice to the Client in the event of a breach or threatened breach hereof by Client, or in the event that the Client takes any action which the Provider believes to be unlawful, unethical, or improper.

5.2 In the event of the dissolution, bankruptcy, winding up, or death of the principal owner of Provider, Provider may terminate this Agreement immediately upon notice to Client. For purposes of clarity, Client's





continued performance of all its obligations stated herein shall be considered material to the Agreement, and the default therein shall entitle the Provider to terminate this Agreement upon notice to Client. Termination of this Agreement for any reason will not relieve Client of its payment obligations hereunder. At the time of termination, Provider will advise Client of any outstanding balance on the Committed Cost, and Client shall remit/authorize payment for the same within thirty (30) days therefrom. If Client fails to remit/authorize payment for any outstanding balance on the Committed Cost within the foregoing timeframe, then Provider shall automatically be authorized and entitled to, without further notice or demand, charge any debit card, credit card, or bank account on file with Provider.

5.3 Despite any termination of this Agreement during the Initial Term and during any Renewal Terms, the entirety of the Committed Costs shall remain due and payable. After the Initial Term and during any Renewal Terms, if the Client attempts to terminate this Agreement with less than thirty (30) days' advance written notice, then Client shall be responsible for all costs, fees, and expenses incurred by Provider up to and including the date of termination, as calculated by Provider in its sole and absolute discretion. Payment by Client of the foregoing shall not relieve Client of any other payment obligations hereunder, nor shall demand for such payment be considered Provider's exclusive remedy hereunder. Notwithstanding the foregoing, if Client believes there is Cause to terminate this Agreement, then Client shall give Provider 30 days' notice of its intention to terminate this Agreement with Cause and the reason for such Cause, and Provider shall have 30 days' to address such reason for Cause to the reasonable satisfaction of Client. If Provider fails to address such reason for Cause to the reasonable satisfaction of Client, then Client can cancel this Agreement with 30 days' notice. Client understands, acknowledges, agrees, and accepts that it has a good faith obligation to mutually participate with Provider in order that Provider may perform the Services as specified in the Proposal and that Provider is dependent upon such good faith obligation in order to perform the Services.

5.4 All sections of the Agreement which by their nature should survive termination will survive termination, including, without limitation, waivers of and limitations on Provider's liability, releases by Client, indemnity agreements, venue and choice of law provisions, waivers and disclaimers of warranties and guarantees, and confidentiality provisions. The foregoing list is not exhaustive.

## **6. WARRANTY AND DISCLAIMER**

NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, PROVIDER DOES NOT WARRANT, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED AS TO: (I) PERFORMANCE OR EFFECTIVENESS OF CLIENT CONTENT OR SERVICES; (II) NON-INFRINGEMENT OR ABILITY OF CLIENT CONTENT TO BE TRADEMARKED OR COPYRIGHT PROTECTED; OR (III) CLIENT CUSTOMERS' ABILITY TO ACCESS THE CLIENT CONTENT (INCLUDING DOWNTIME OF THE DELIVERY PLATFORMS THEREOF). THE SERVICES OF PROVIDER ARE PROVIDED "AS IS", AND PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## **7. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, OR ANY AMENDMENT HERETO, CLIENT HEREBY RELEASES AND WAIVES ALL RIGHTS, CLAIMS, AND ACTIONS AGAINST ALL PROVIDER PARTIES AND PROVIDER'S VENDORS, OFFICERS, AFFILIATES, REPRESENTATIVES, ASSIGNS, SUBSIDIARIES, CONTRACTORS, AND EMPLOYEES FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE, REVENUE, OR PROFITS, OR FOR ANY MATTER BEYOND PROVIDER'S REASONABLE CONTROL, INCLUDING ACTS OF GOD, CIVIL STRIFE, HACKING, SECURITY BREACHES, OR OTHER SIMILAR



MATTERS. THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO CLIENT IN ANY ACTION AUTHORIZED UNDER THIS AGREEMENT OR BY APPLICABLE LAW AGAINST PROVIDER SHALL BE LIMITED TO THE SUM OF ONE (1) MONTH'S MOST RECENT MONTHLY CLIENT INVESTMENT, REGARDLESS OF WHETHER PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF ADDITIONAL DAMAGES. CLIENT EXPRESSLY WAIVES THE RIGHT TO SEEK RECOVERY OF ANY OTHER MEASURE OF DAMAGES, OR FOR ANY OTHER REMEDY AT LAW OR IN EQUITY.

## 8. MISCELLANEOUS

8.1 The Agreement is not assignable, transferable, or sublicensable by Client except with Provider's prior written consent, which may be withheld in its sole and absolute discretion. Provider may assign the Agreement without the consent of or prior notice to Client.

8.2 Except as otherwise provided herein, including without limitation under Entire Agreement above, no waiver or modification of the Agreement shall be valid unless made in the form of a writing signed by Provider. However, changes to the Services may be made from time to time by the Provider within the scope of the Proposal.

8.3 No agency, partnership, joint venture, or employment relationship is created between the Parties or their respective personnel by virtue of the Agreement and Client does not have any authority of any kind to bind Provider in any respect whatsoever to any obligation not expressly stated in the Agreement. Provider is an independent contractor of Client. Provider has no control over or responsibility for the business decisions of Client, and therefore Provider shall not be held liable for any action or inaction of Client which is based upon Client's interaction or relationship with Provider.

8.4 In the event that legal action is taken by either Party against the other (or against Guarantor) to enforce the provisions of this Agreement, the prevailing party from such dispute shall be entitled to recover its attorney's fees and court costs arising from such dispute, together with any fees or costs incurred in determining the amount of fees to be recovered. As used in this subsection the term "prevailing party" means the party prevailing on the substantial matters of law in such legal action.

8.5 All notices under the Agreement must be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next-day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested. Either Party may update its contact information for purposes of notice by giving notice of the same to the other party as provided for herein.

8.6 The Agreement shall be governed by the laws of the State of Florida without regard to its conflict or choice of law principles. Venue for any legal action or other proceeding arising from or relating to the Agreement shall be proper, convenient, and exclusive in the county wherein Provider's principal place of business is located, and both parties hereby expressly and irrevocably consent to the personal jurisdiction of the courts thereof over each party. The Parties expressly agree that the Agreement shall be considered to have been made and entered into in such county.

8.7 CLIENT HEREBY EXPRESSLY AND IRREVOCABLY WAIVES CLIENT'S RIGHT TO A TRIAL BY JURY IN ANY LEGAL ACTION ARISING FROM OR RELATING IN ANY WAY TO THE AGREEMENT.

8.8 Client hereby expressly, absolutely, and irrevocably waives all defenses, whether arising in equity or at law, which may now or hereafter be available to Client, as to the validity and enforcement of this Agreement, including, but not limited to duress, estoppel, failure or lack of consideration, fraud, misrepresentation, lack of



capacity, unconscionability, unclean hands, or undue influence. Client and Guarantor expressly agree that all provisions of this Agreement are necessary and reasonable.

8.9 Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been set forth herein.

8.10 This Agreement shall be binding upon and inure to the benefit of each Party's respective heirs, successors, and assigns.

8.11 The language used in this Agreement will be deemed the language chosen by the Parties to express their mutual intent, and no rules of strict construction will be applied against either Party.

8.12 The Guarantor shall be considered to have obligated themselves to Provider to the same and equal extent as Client for all obligations stated herein. Specifically, and without limitation, Guarantor expressly agrees to all provisions of sections 2, 3, 4, 6, 7, 8, and 9 of this Agreement. However, Guarantor hereby expressly and unconditionally guarantees all obligations of Client as set forth in this Agreement. Furthermore, Guarantor's liability to Provider is joint and several with Client; accordingly, in any legal action to enforce the provisions of this Agreement, it shall not be necessary for Provider to bring such action against Client first in order to proceed against Guarantor individually.

8.13 Unless otherwise stated in a proposal, which said proposal shall control exclusivity, this Agreement is not exclusive and nothing contained in this Agreement shall be deemed or construed as a limitation on Provider's right to work with and perform services similar or identical to the Services for other persons and entities, including competitors of Client.

8.14 Nothing in this Agreement shall be construed so as to reduce, restrict, limit, negate, or abridge Provider's right to collaborate with, share information related to the Services and Client Content with, and subcontract all or part of the Services to its preferred vendors and contractors, which right is expressly affirmed and acknowledged by Client.

8.15 Notwithstanding anything to the contrary contained in this Agreement, except for an action by Provider against Client or Guarantor arising from or related to nonpayment of sums owed to Provider hereunder, neither Party may commence litigation against the other Party without providing written notice and demand to the other Party setting forth the matters and amounts (if applicable) in dispute, and without first attempting in good faith to mediate the dispute before a certified mediator in the county wherein the Provider's principal place of business is located.



8.16 In developing Client Content, Provider will test its work in current versions (in effect as of the date of the initial Proposal) of major desktop and mobile browsers including Google Chrome, Mozilla Firefox, Microsoft Edge, Opera, and Safari Mobile. Enhanced designs for older or alternative browsers are not included in the Client Investment and will result in a separate charge.

8.17 Client understands and agrees that 'browser testing' does not mean or include making a website look the same in browsers of different capabilities or on devices with different size screens. Rather, 'browser testing' means ensuring that a person's experience of a design should be appropriate to the capabilities of a browser or device.

8.18 Client understands and acknowledges that Provider's Services are limited to that which is expressly stated in the Proposal. Furthermore, Client understands and acknowledges that future changes to the Client Content (including the Client's website) may be impossible, impracticable, or cost prohibitive depending on the technical capabilities of Provider, as well as the platform upon which the Client Content (including the Client's website) has been built pursuant to the Proposal. Client is fully aware of such limitations, and expressly assumes all risk inherent in engaging in this Agreement with Provider.

## **9. CONSENT TO BIND CLIENT**

9.1 The Client hereby expressly authorizes Provider, as well as any and all of its agents, employees, and contractors, to do all of the following during the Term: (1) Create and open accounts for the provision of services to Client which are necessary or incidental to the Services rendered by Provider to Client; (2) Cancel, modify, or suspend such accounts as is necessary based upon the Services and stated goals of the Client; and (3) on Client's behalf, consent and bind Client to any terms and conditions, user license agreements, or similar documents related to such accounts and services.

9.2 THE CLIENT HAS FULLY READ AND UNDERSTANDS THE PROVISIONS OF THIS SECTION, AND AGREES TO WAIVE AND DISCHARGE AGAINST PROVIDER, AND THAT PROVIDER SHALL NOT BE HELD LIABLE FOR, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS, FEES, FINES, EXPENSES, LOSSES, DAMAGES, OR LIABILITIES OF ANY KIND, WHETHER AT LAW OR IN EQUITY, WHICH ARISE FROM OR RELATE IN ANY WAY TO THIS SECTION OR PROVIDER'S ACTIONS (OR INACTIONS) TAKEN BASED ON, IN FURTHERANCE OF, OR IN RELIANCE UPON THE PROVISIONS OF THIS SECTION.

**\*\*TERMS UPDATED 09-01-2024\*\***

