



SLY FOX

## MSA TERMS AND CONDITIONS

Effective: November 15, 2024

The services provided by Moroch Partners, Inc. and its Agency Affiliates are subject to these MSA Terms and Conditions (the “Terms”). These Terms may be amended at any time by Agency without prior notice to Client; however, the Terms in effect at the at the time the Client signs an Order will govern that specific Order. To the extent these Terms are inconsistent with any Order or other document, agreement, purchase order or understanding between the parties, these Terms shall govern.

### 1. Definitions.

1.1 For the purposes of these Terms, the following terms have the meaning ascribed to them below:

“Agency” refers to Moroch Partners, Inc., and/or any of its Agency Affiliates providing Services to Client.

“Agency Affiliate” refers to any company which shares ownership or management with Moroch Holdings, Inc.

“Agreement” refers to the Order, together with this these Terms.

“ATB” refers to any Media authorization form (whether in the format of an estimate, Media flowchart or other format agreed to by the Parties) allowing Agency to purchase advertising inventory on Client’s behalf and indicating the Fees associated with such purchase. An ATB may also reflect Third Party Costs or Agency fees for creative content and production requirements necessary to make an effective Media Placement.

“Client” refers to the company, organization, or person purchasing Services from Agency or authorizing Agency to purchase Media and/or materials on the Client’s behalf.

“Cost Estimate” refers to a detailed breakdown of Agency’s good faith estimate of the direct and indirect Third-Party Costs and fees required in the performance of the Services covered by such Cost Estimate.

“Digital Media Placement” means all Media Placements in digital Media including, but not limited to, search, digital out-of-home media, over-the-top and advanced television, display, video, mobile and social media.

“Media” means all platforms upon which Media Placements are placed that now exist or may hereinafter be invented, including but not limited to television, radio, print, outdoor, internet, and mobile.

“Media Placement” means advertising, sponsorship or promotional Media purchased by Agency, either directly or indirectly from third parties or Agency Affiliates, in connection with the provision of Services.

“Order” refers to (i) each ATB, Cost Estimate, or Statement of Work between Client and Agency governing Client’s purchase of Services and (ii) any request by Client for Agency to provide Services.

“Programmatic Media” means the buying and selling of online ad inventory primarily through automated methods rather than human actions, this includes, but is not limited to Real-Time Bidding (or “RTB”) and purchases through digital platforms, including, networks, exchanges, trading desks, and demand-side platforms (DSPs).

“Service(s)” refers to each of the services, individually and collectively, as set forth in the Order or otherwise requested by Client.

“Third Party Costs” means all third-party costs or out-of-pocket expenses incurred by Agency or any Agency Affiliates on behalf of Client in performing the Services, including vendor and Media costs.

1.2 Capitalized terms not defined in Section 1.1 have the meanings set forth in the section in which they are defined.

2. Agency Status. Client authorizes Agency to act on Client’s behalf as Client’s agent in purchasing the materials and services required to execute Client’s advertising as authorized in writing by Client. Client acknowledges that certain Agency Affiliates may facilitate Media buys hereunder as sub-agent.

3. Term and Termination. This Agreement (including any Order, unless otherwise stated in such Order) shall continue until such time that either party issues a written termination notice ninety (90) days in advance. In such event, Client shall pay Agency the compensation due to Agency for Services, and any other obligations with third parties that have been entered into by Agency as agent for Client. If this Agreement is terminated, any outstanding Orders shall continue until completed by their terms or terminated as provided herein or in such Order. Notwithstanding a termination of this Agreement, the Terms shall apply to all such outstanding Orders until so completed or terminated. Should any Services extend beyond the termination date for purposes such as reconciliations or reporting, Agency will provide Client with a good faith estimate of the costs associated with such post-termination services. Agency will not be obligated to perform post-termination services without reasonable remuneration.

4. Services

4.1 Subject to the terms of this Agreement, Agency will provide the Services to Client as set forth in the Order. Any Services performed prior to the Order’s effective date are hereby incorporated into and governed by this Agreement.

4.2 If Agency is directed by Client to perform any Services which, in the opinion of Agency, may increase the scope of Services or charges to Client under an Order, Agency will provide a revised or additional Order for such increase in Services or charges for approval.

4.3 Unless otherwise specifically provided in the applicable Order, Client will conduct all necessary internal legal reviews (at Client’s discretion) of Services, after which the Client will notify Agency of any necessary changes. Third Party Costs associated with Agency supporting the legal approval of any Service, including reviews and revisions will require an additional estimate. After implementing any changes requested by Client, Agency will present Client with the final content for final review and approval.

5. Media Planning and Buying.

5.1 If Media planning and buying services are requested, the estimated costs for such services will be as shown on an Order for Client’s approval before commitment to such Media or third-party vendor.

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5.2 Agency will plan, reserve, and order time/space with the Media to be used for advertising and obtain the most favorable terms and rates available. Agency will use professional skill in the selection of Media vendors, which may include Agency Affiliates, to optimize Client's return on investment.

5.3 Agency shall invoice Client for Media vendor costs using the Contract Method. For purposes of this Agreement, "**Contract Method**" means Agency shall invoice Client for Media vendor costs upon placement of flight, with reconciliation to be provided as indicated in Section 5.5.

5.4 Agency shall operate on a transparent basis when offering and delivering Digital Media Placements. Client understands there are Third Party Costs associated with Digital Media Placements.

5.5 Agency will check all orders with Media to confirm proper performance of the orders, including checking the accuracy of broadcasts/displays against the requested order, and the timeliness of broadcasts/displays of that order. Agency will review all invoices for Media activity placed by Agency and reconcile any discrepancies between what was placed with the Media by Agency on Client's behalf and what was invoiced. This reconciliation will be provided approximately ninety (90) days after end of Media flight.

5.6 Client has the right to modify, reject, cancel, or stop any and all plans, schedules, and works in process which have been approved by Client in writing subject to the terms of the commitments in place at the time (e.g., cancellation policies of Media vendors). Agency will immediately take proper steps to carry out Client's instructions. In such event, Client will:

a. assume Agency's liability for all commitments authorized and therefore incurred by Agency to the time of allowable cancellation,

b. reimburse Agency for all reasonable expenses incurred by Agency to the time of such cancellation, and

c. compensate Agency the appropriate fee/commission for time spent by Agency in connection with the development and preparation of any cancelled plan or schedule.

5.7 For all Media Placements or other purchases by Agency on Client's behalf, Agency attempts to obtain sequential liability from such Media and vendors, where Agency shall be held liable for payments only to the extent proceeds have cleared from Client to Agency for such purchases.

## 6. Payment and Invoices.

6.1 Client shall pay all amounts owed to Agency in respect of the Service, whether quoted as a set price, commission, or based on Agency's rate card, including any applicable cancellation or other fees set forth in an Order or otherwise agreed between Client and Agency (collectively, the "**Fees**"). Agency's Fees shall be billed concurrently with the month of service rendered by Agency. With respect to Clients that pay Fees based on Agency's rate card, Agency reserves the right to change its rate card for Services upon notice to Client of such changes. Rate cards are traditionally updated annually. In instances where a third-party vendor requires prepayment, prepayment by Client may be required prior to Agency providing Services.

6.2 Client is responsible for all sales, use, or excise taxes, and any other similar taxes, duties and charges of any kind, applicable to taxable products and Services provided under this Agreement ("**Taxes**"); provided, that, in no event shall Client pay or be responsible for any taxes imposed on, or with respect to, Agency's income, revenues, gross receipts, personnel, or real or personal property, or other assets.

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6.3 Agency invoices are normally sent via email in PDF format no later than the tenth (10th) day of every month. Client agrees to pay Agency's invoices in full within thirty (30) days from the invoice date. Agency reserves the right, in case of delinquency in Client's payments to Agency, to change requirements of payment under this Agreement. If Client fails to pay amounts due as set forth herein, Agency may suspend services provided under any active Orders until account is in good standing.

6.4 Agency requests, but does not require, that Client use the EFT method of payment (Electronic Funds Transfer). Banking information will be provided to facilitate payment.

6.5 If Client disputes any portion of an invoice, the undisputed portion will be paid as outlined above and, when the dispute is resolved, Agency will issue an adjustment invoice and Client will pay any remaining amount owing as reflected on the adjustment invoice. Disputes to invoices are to be made in writing within fifteen (15) days of Client's receipt of any invoice with the intent to resolve any invoice amount dispute within fifteen (15) days of Client raising the dispute. Client will not be liable for payment of interest on amounts disputed in good faith.

## 7. Responsibility for Materials/Data/Talent.

7.1 If Client provides any materials or data for Agency's use, Client warrants that all rights and/or consents have been obtained for the usage contemplated by the applicable Order. Client represents and warrants that any materials it delivers to Agency will be clear of any liens or restrictions for Agency's use, and such materials will not infringe or violate any copyrights, trademarks, trade secrets, patents, rights of publicity, or other privacy rights of any third party, except as disclosed in writing to Agency by Client.

7.2 Client agrees to comply with all applicable privacy, electronic communications and data protection laws, regulations, and regulatory guidelines, whether state, provincial, federal, or international, as may be amended (collectively, "**Rules**") applicable to Client's use of the Services and the collection, use or provision to Agency of Client data, whether collected by Client or its affiliates, subsidiaries, franchisees, or any agent other acting on Client's behalf. In addition to the above, if applicable, Client agrees to (1) comply with its obligations as a business under any applicable state law, including but not limited to the California Consumer Privacy Act (CCPA), including honoring opt-out of sale requests, (2) refrain from using Agency's Services to send targeted ads to consumers who have opted out (i.e., by excluding such consumers from the list provided to Agency), and (3) to the extent consumers opt out after they already have been included in the relevant list, provide sufficient information to Agency to enable Agency and ad servers to remove relevant consumers from the file used to send targeted ads.

7.3 Client will ensure that any website where advertising is directed in conjunction with the Services will have an easily accessible privacy policy. Such privacy policy must comply with the requirements of the Rules for notices to or consents from individuals whose data is collected or provided to Agency.

7.4 If Agency secures any licensed materials on behalf of Client, Agency will secure rights for use as contemplated under the scope of the applicable Order, which will be subject to payment by Client of any applicable licensing fees. If Client wishes to use any licensed materials obtained by Agency for another project, Client understands that such use may require additional licensing fees and agrees to pay such fees. If Client wishes to transition a license for any licensed materials obtained by Agency on behalf of Client to another company and/or brand owned by or affiliated with Client, Client understands that such transfer of license may require additional licensing fees and agrees to pay such fees. Agency shall not be responsible for breaches by any third party providing licensed materials but will cooperate with Client in asserting Client's rights against such third party.

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7.5 Client acknowledges that Agency is not a signatory to SAG/AFTRA talent union contracts. If Client desires to use talent subject to such contracts, Client will cooperate with Agency to act as signatory or use a signatory service for any work related to such contracts. Client acknowledges that use of any third-party signatory service will require additional fees.

8. Books and Records. Agency shall maintain books and records to substantiate both the Services and expenses under any Order. Such books and records will be retained by Agency for a period of two (2) years from and after the completion of any Services under this Agreement. Client, or representatives reasonably acceptable to Agency, shall have the right to audit, at Client's expense, such records at all reasonable times upon thirty (30) days' prior written notice to Agency provided such timing does not (a) conflict with other pre-arranged internal or external audits at Agency as reasonably documented by Agency or (b) occur in the months of December or January. For the avoidance of doubt, no access will be granted to Agency's compensation information or personnel files, internal profit/loss statements or general ledger records.

#### 9. Ownership of Deliverables

9.1 Unless otherwise specified in these Terms or any Order, Client shall be the owner of all right, title and interest, under copyright or otherwise, in and to the results, work product and proceeds of Agency's Services to Client (the "**Works**"), subject to any third-party licensed materials approved by Client. Client shall be responsible for the selection and use of its trademarks and service marks. Agency shall not be responsible for the materials provided by Client for Agency's use.

9.2 Agency shall deliver all Works to Client promptly upon their completion or the sooner termination of Agency's Services hereunder upon payment as required by the applicable Order. Agency agrees to execute any and all documents as requested by Client to further evidence any of the transfers or assignments provided for herein.

9.3 Client acknowledges that creative content generated by artificial intelligence (AI) tools, if used, may not be eligible for copyright protection since AI-generated content may not meet the requirements for copyright protection under current law.

9.4 Client acknowledges that Agency may own certain marketing knowledge, techniques, procedures, planning tools, software, algorithms, protocols, routines, and methods used in providing Agency's Services (collectively, "**Agency Property**"), that are and have been developed and used by Agency in the course of Agency's business and that Agency uses or may use for multiple clients or projects. All such Agency Property shall be and remain Agency's property; provided, however, that to the extent the Agency Property is included in the Works, Client shall have a fully paid, non-exclusive, perpetual, royalty-free license to use the Agency Property in the Works furnished by Agency to Client in the manner agreed upon by Client and Agency, subject to payment as required by the applicable Order. If applicable, Client acknowledges that Client's right to use the Data Visualization Tool and related databases provided by Agency will terminate upon termination of the applicable Order.

9.5 If applicable, the Additional Provisions Regarding Software Development attached as Exhibit A shall apply to any software development and digital work provided by Agency.

#### 10. Confidential Information

10.1 The provision of Services creates a confidential relationship between the parties. Information concerning either party's business affairs, vendors, finances, properties, methods of operation, computer programs, employees, documentation, and other such information whether written, oral, or otherwise, is confidential in nature ("**Confidential Information**"). All Confidential Information disclosed by one party to the other shall be treated as confidential and shall be maintained in confidence and shall not

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be disclosed to anyone in any form without the prior written consent of the disclosing party. The Confidential Information shall not be used by either party other than in connection with the terms of this Agreement.

10.2 The following shall not be deemed to constitute Confidential Information and shall not be subject to the restrictions set forth in this Agreement: (i) information that has entered or subsequently enters the public domain without either party's breach of any obligation under this Agreement; (ii) information that was known to the receiving party prior to the disclosing party's disclosure of such information; (iii) information which is obtained from a third party without violation of an obligation of nondisclosure; and/or (iv) information that is independently developed by a party without reference to the other party's Confidential Information. The provisions of this Section shall survive the expiration or termination of this Agreement.

10.3 If either party or its representatives are requested or required (by oral questions, interrogatories, requests for information, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, it is agreed that such party will provide the other party with prompt written notice of such request(s) so that the other party may seek an appropriate protective order and/or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, such party are, in the opinion of outside counsel, compelled to disclose the other party's Confidential Information under pain of liability for contempt or other censure or penalty, such party may disclose only that portion of such information as is legally required without liability hereunder, provided, that such party agrees to exercise its commercially reasonable best efforts to obtain assurance that confidential treatment will be accorded such information.

## 11. Representations and Warranties

11.1 Agency represents and warrants to Client that it has the knowledge, experience and skill to perform the Services required to be performed by it hereunder; it shall comply with all federal, state and local laws in effect at the time Services are performed that are applicable to Agency, including all professional registration requirements; and it shall perform said Services in accordance with generally accepted professional standards and in an expeditious and economical manner consistent with sound professional practices.

11.2 Agency represents and warrants that any documentation or other deliverables developed by Agency and delivered to Client hereunder will be free and clear of any liens or restrictions created by Agency (but subject to any license limitations disclosed to Client), and Agency will not knowingly infringe or violate any copyrights, trademarks, trade secrets, patents, or other privacy rights of any third party.

## 12. Indemnification.

12.1 Client agrees to defend, indemnify, and hold harmless Agency, its officers, directors, employees, consultants, affiliates, subsidiaries and agents from and against any and all liabilities, damages and costs, including settlement costs and reasonable attorneys' fees (collectively "**Losses**") arising out of any third party claim, demands and causes of action that: (i) is due to Client's breach of this Agreement; (ii) arises out of the gross negligence or willful misconduct of Client; (iii) is based upon the use of Client's products or services; (iv) arises out of materials, data, or information provided by Client (including the validity of claims made by Client or its trademarks and service mark) for Agency use when used by Agency according to Client's instructions, (v) arises out of the risks brought to the attention of Client where Client nonetheless elected in writing to proceed; (vi) is based upon Client's use or modification of licensed materials supplied by Agency in a manner inconsistent with agreements with third parties; or (vii) if applicable, is based upon Client's obligations to the Screen Actors Guild or the American Federation of Television and Radio Artists ("**SAG-AFTRA**"), and their respective members, or other third-party vendors,

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which may arise out of Client's use of materials produced by Agency in connection with this Agreement outside the scope of any release obtained when producing such material.

12.2 Agency agrees to indemnify and hold harmless Client, its officers, directors, employees, consultants, affiliates, subsidiaries and agents from and against all Losses arising out of any third party claims, demands and causes of action that: (i) is due to Agency's breach of this Agreement, (ii) arises out of the gross negligence or willful misconduct of Agency, or (iii) except as otherwise provided in this Agreement, results from Agency's actions involving copyright infringement, violation of personal rights of privacy, misappropriation of ideas, defamation, literary piracy, or plagiarism.

12.3 Subject to the terms of the next sentence, the party seeking indemnification agrees to provide the other party with (a) prompt written notice of any such claim or action for which indemnification is sought, (b) sole control and authority over the defense or settlement of such claim or action, and (c) reasonable assistance (at the indemnifying party's expense) to settle and/or defend any such claim or action. Notwithstanding anything to the contrary in this Agreement, the indemnifying party's authority to defend or settle a claim or action is subject to the indemnifying party obtaining the other party's prior written consent to enter into any settlement that would affect the other party's rights or obligations, exclusive of the payment of any amount for which the indemnifying party will indemnify the other party.

12.4 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, WHETHER IN AN ACTION BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY SUCH PARTY.

12.5 WITH RESPECT TO AGENCY'S PERFORMANCE OF THE SERVICES, AGENCY'S TOTAL LIABILITY FOR DAMAGES, COSTS, AND EXPENSES FOR ITS PERFORMANCE OF SUCH SERVICES SHALL BE LIMITED TO EITHER (1) THE APPLICABLE INSURANCE COVERAGE OR (2) THE AMOUNT OF FEES PAID BY CLIENT AND RECEIVED BY AGENCY UNDER THE ORDER GIVING RISE TO THE CLAIM.

13. Subcontractors. Agency may use subcontractors to provide certain of the Services hereunder. Agency will remain responsible for the work of such subcontractors as if performed by Agency hereunder; however, where Agency contracts with third-party vendors as agent for Client (including but not limited to Media, bloggers, influencers, direct mail printers, email delivery companies, software sellers, or others), such third-party vendors are not considered subcontractors of Agency and Agency will not be responsible for breaches of any obligations by such third-party vendor, but will cooperate with Client on pursuing any claims for breach against such vendor.

14. Modification. This Agreement may not be modified or amended except in writing signed by both parties.

15. Assignment. This Agreement may not be assigned by either party, voluntarily or involuntarily or by operation of law, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

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16. Notices. Any notice or other communication required or permitted to be given hereunder shall be given in writing and delivered in person, mailed, or delivered by recognized courier service, properly addressed with delivery charges prepaid, to the intended recipient at its address specified below. Notice given in accordance with this Section shall be deemed effective upon receipt. Either party may from time to time change its address by giving the other party notice of the change in accordance with this Section.

If to Agency:

Moroch  
147 Manufacturing Street  
Dallas, TX 75207  
Attn: Chief Financial Officer

With a copy via E-mail required to: legal@moroch.com

If to Client:

At the address shown on any New Client Form provided by Client or other primary business address.

17. Governing Law; Waiver of Jury Trial; Determination of Disputes

17.1 This Agreement shall be governed by, and construed, interpreted, and enforced in accordance with, the laws of the State of Texas without giving effect to any principles of conflicts of law. The Parties agree that any action related to this Agreement shall be brought in a court of competent jurisdiction located in Dallas, Texas.

17.2 TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR JUDICIAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT EITHER OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY LAWSUIT OR JUDICIAL PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

18. Entire Agreement. This Agreement, including the exhibits attached hereto and any applicable Order, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, supersedes any and all prior agreements or understandings between the parties with respect to the subject matter hereof, whether written or oral, and any representation, promise or condition not specifically incorporated herein shall not be binding upon either party. To the extent this Agreement is inconsistent with any Order or other document, agreement, purchase order or understanding between the parties, this Agreement shall govern.

19. Waiver of Breach. No failure by either party to insist upon the strict performance of any term or condition herein or to exercise any right or remedy available to it will constitute a waiver. Any waiver by a party of any breach of this Agreement by the other party shall not be construed to be a continuing waiver or consent to any subsequent breach on the part of the other party.

20. Severability. To the extent any provision of this Agreement or portion thereof shall be invalid or unenforceable, it shall be considered deleted from this Agreement and the remainder of such provision and of this Agreement shall be unaffected and shall continue in full force and effect.

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21. Attorneys' Fees. In any legal action or other proceeding brought with respect to this Agreement, the party that prevails substantially on the merits shall be entitled to recover from the other party its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
22. Force Majeure. Neither party will be liable for performance delays nor for non-performance if such failure results from any cause beyond such party's reasonable control, except for payment obligations.
23. Headings. The headings contained in this Agreement do not form a substantive part of this Agreement and shall not be construed to limit or otherwise modify its provisions.
24. Construction. This Agreement will be interpreted fairly in accordance with its terms, without any strict construction in favor of or against either party. The following words shall be interpreted as designated: (i) "or" connotes any combination of all or any of the items listed; (ii) where "including," "include" or "includes" is used to refer to an example or begins a list of items, such example or items shall not be exclusive; and (iii) references to "days" shall mean calendar days, unless otherwise expressly referred to as "business days."
25. Survival. The provisions of Sections 10, 11, 12, 13, 15-25 and Exhibit A, shall survive the expiration or termination of this Agreement.
26. Counterparts. Any part of this Agreement may be executed in one or more counterparts, including facsimile, PDF, and other electronic copies, each of which shall be deemed to be an original, and all of which together shall be deemed to constitute one and the same instrument.

T&C Version: 11.15.2024

[END OF TERMS AND CONDITIONS]

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**EXHIBIT A**  
**ADDITIONAL PROVISIONS REGARDING SOFTWARE DEVELOPMENT**

1. SERVICES AND LIMITED WARRANTY

a. Agency will use industry standards and procedures (including coding tools, where applicable) in performing the Services, so that the software and digital project assets created as a result of the Services (the “**Deliverables**”) may be maintained and modified by or for Client by skilled professionals in the software development industry, subject to the intellectual property rights described below.

b. If any errors arise that are in scope of the Order consistent with the Deliverables’ specifications, Agency will resolve the error to the best of its ability. Any errors found to be outside the scope of the specifications for the Deliverables will be scoped and repaired upon approval of estimates provided by Agency. In order to receive warranty remedies, deficiencies must be reported to Agency in writing within sixty (60) days of acceptance of the Services. Unauthorized modification of the Deliverables shall cause immediate termination of any applicable warranty as established above. Unless otherwise provided in this Agreement, Client’s sole remedy shall be to have the deficiencies remedied or to receive a refund of the pro rata amount of the fees allocable to such Deliverables, at Agency’s option.

c. THE WARRANTY ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES FOR THE DELIVERABLES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, WHICH ARE EXPRESSLY DISCLAIMED.

2. INDEMNITY REGARDING DELIVERABLES

a. Agency will indemnify and hold Client harmless from and against any legal proceeding brought against Client to the extent that it is based on a claim that the Deliverables, in the form furnished by Agency or modified in accordance with Agency’s instructions, infringes any United States copyrights or constitutes misappropriation of trade secrets. As a condition to such indemnity, Client must: (i) provide notice of the claim promptly to Agency; (ii) give Agency sole control of the defense and settlement of the claim; (iii) provide to Agency all available information, assistance, and authority to defend or settle the claim; and (iv) not compromise or settle such proceeding without Agency’s prior written consent. Agency shall not be responsible to the extent claims arise from or are based on: (a) compliance with Client’s designs, specifications, or instructions or incorporation of material provided by Client; (b) the use by Client (or those authorized by Client) of the Deliverables or any part thereof furnished hereunder, in combination with goods, equipment, software or data not authorized by Agency, or any modification of the Deliverables not authorized by Agency; (c) patent infringement; or (d) the use of any allegedly infringing version of any Deliverables, if such alleged infringement could be avoided by the use of a different functionally equivalent version made available to Client by Agency.

b. Should the Deliverables or any portion thereof become, or is likely to become, the subject of a claim of infringement for which Agency is responsible, Agency will have the right to either: (i) obtain for Client the right to use such Deliverables for the purpose developed by Agency; or (ii) replace or modify the applicable Deliverables to become non-infringing.

c. THIS SECTION 2 STATES THE ENTIRE LIABILITY OF AGENCY WITH RESPECT TO INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. AGENCY’S TOTAL LIABILITY TO CLIENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID TO AGENCY BY CLIENT FOR THE SPECIFIC DELIVERABLES SUBJECT TO THE CLAIM.

3. INTELLECTUAL PROPERTY RIGHTS

a. If Client authorizes the use of any third-party software in the Deliverables, such software will be subject to the applicable license terms with the applicable provider of such software.

b. Client acknowledges that Agency may own certain computer software, knowledge, techniques, procedures, algorithms, protocols, routines, and methods used in the creation of computer software and other digital production (collectively, “**Agency Software**”), that are and have been developed and used by Agency in the course of Agency’s business and that Agency uses or may use for multiple clients or projects. All such Agency Software shall be and remain Agency’s property; provided, however, that to the extent the Agency Software is included in any Deliverables, Client shall have a non-exclusive, royalty-free license to use the Agency Software in the Deliverables furnished by Agency to Client in the manner agreed by Client and Agency.

[END OF EXHIBIT A]

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