

TERMS AND CONDITIONS

The services provided by Moroch Partners, Inc. and its affiliates are subject to these Terms & Conditions. 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 affiliates providing Services to Client.

“Agreement” refers to the Order, together with 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.

“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 costs and fees required in the performance of the Services.

“Order” refers to (i) each ATB, Cost Estimate, Media Flowchart, 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.

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

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. Where Agency has obtained materials as agent for Client, Agency will not be responsible for breaches of any obligations by such third party vendor providing such materials, but will cooperate with Client on pursuing any claims for breach against such vendor.

3. Term and Termination. These Terms continue in force until the expiration, cancellation or termination of the Service Term. The Service Term commences on the start date indicated on the Order (or, if no start date is indicated, upon Agency’s acceptance of the Order, or as otherwise agreed by the Parties), and remains in effect until the Service has been rendered and payment of all amounts due in respect of the Service (including any obligations with third parties that have been entered into by Agency as agent for Client) is received in full (“Service Term”). Unless otherwise specified in the Order, the Service Term may be terminated by either party with ninety (90) days’ prior written notice to the other party.

Confidential and Proprietary

Not to be disclosed to any person other than authorized representatives of the parties to this agreement without the express written consent of both parties.

4. Services.

4.1 Subject to these Terms, Agency will provide the Service to Client as set forth in the Order. Any Service performed prior to the Order's effective date are hereby incorporated into and governed by these Terms.

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. 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 or production 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. Agency will make every reasonable attempt to keep actual costs within ten percent (10%) of estimates. If changes or other circumstances indicate that actual costs will exceed the estimates by more than ten percent (10%), Agency will provide a revised estimate for Client's approval.

5.2 Agency will plan, reserve, and order time/space with the medium or media to be used for advertising and obtain the most favorable terms and rates available. Agency places media upon receipt of signed Order from Client. Agency shall invoice Client for media vendor costs using the Contract Method. For purposes of these Terms, "Contract Method" means Agency shall invoice Client for media vendor costs upon placement of flight, with reconciliation to be provided as indicated in Section 5.4.

5.3 Agency will check and follow through on all orders with media to ensure proper performance of the orders, including checking the accuracy of broadcasts against the requested order, and the timeliness of broadcasts 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 no later than ninety (90) days after end of media flight.

5.4 Client has the right to modify, reject, cancel, or stop any and all plans, schedules, and works in process 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. continue to compensate Agency the appropriate retainer and/or equivalent commissions for servicing those media cancelled, by no failure of Agency, which had previously been planned, authorized and placed by Agency and/or its affiliates.

5.5 For all media 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.

Confidential and Proprietary

Not to be disclosed to any person other than authorized representatives of the parties to this agreement without the express written consent of both parties.

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"). 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.

6.2 Agency invoices are 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 these Terms. 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.

6.3 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.

6.4. 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 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 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, flow down 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

Confidential and Proprietary

Not to be disclosed to any person other than authorized representatives of the parties to this agreement without the express written consent of both parties.

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.

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, Agency will cooperate with Client to use a signatory to such contracts for such work, and such costs will be reflected in the applicable Order.

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. Client, or representatives reasonably acceptable to Agency, shall have the right to audit such records at all reasonable times upon thirty (30) days' prior written notice to Agency.

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 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 any Data Visualization Tool (Dashboard) and related databases provided by Agency will terminate upon termination of the applicable Order.

9.4 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 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 Services.

10.2 The following shall not be deemed to constitute Confidential Information and shall not be subject to the restrictions set forth herein: i) information that has entered or subsequently enters the public domain without either party's breach of any obligation under these Terms; ii) information that was known to the

Confidential and Proprietary

Not to be disclosed to any person other than authorized representatives of the parties to this agreement without the express written consent of both parties.

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 these Terms.

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 these Terms; (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 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; or (vi) is based upon Client's use or modification of licensed materials beyond the scope of rights obtained by Agency with Client's written authorization.

12.2 Agency agrees to indemnify and hold harmless Client, its officers, directors, employees, consultants, affiliates, subsidiaries and agents from and against all liabilities, damages and costs (including settlement costs and reasonable attorneys' fees) arising out of any third party claims, demands and courses of action that: (i) is due to Agency's breach of these Terms, (ii) arises out of the gross negligence or willful misconduct of Agency, or (iii) except as otherwise provided in these Terms, 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

Confidential and Proprietary

Not to be disclosed to any person other than authorized representatives of the parties to this agreement without the express written consent of both parties.

to the contrary in these Terms, 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.

13. Modification. Agency may update these Terms from time to time. Orders are governed by the Terms in place at the time the Order is executed by Client. The most recent version will be as indicated on any Order signed by the Client.

14. Assignment. These Terms 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. Agency may use subcontractors (including affiliated companies) 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, such third party vendors are not considered subcontractors of Agency.

15. 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 and 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
3625 N. Hall Street, #1100
Dallas, TX 75219
Attn: Chief Financial Officer

With a copy via Email to: legal@moroch.com

If to Client:

At the address shown on any New Client Form provided by Client.

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

16.1 These Terms 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 these Terms shall be brought in a court of competent jurisdiction located in Dallas, Texas.

16.2 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 THESE TERMS, 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 THESE TERMS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

17. Entire Agreement. These Terms, 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

Confidential and Proprietary

Not to be disclosed to any person other than authorized representatives of the parties to this agreement without the express written consent of both parties.

hereof, whether written or oral, and any representation, premise or condition not specifically incorporated herein shall not be binding upon either party.

18. 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 these Terms 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.

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

20. Attorneys' Fees. In any legal action or other proceeding brought with respect to these Terms, 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.

21. 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.

22. Headings. The headings contained in herein do not form a substantive part of these Terms and shall not be construed to limit or otherwise modify its provisions.

23. Construction. These Terms 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."

24. Survival. The provisions of Sections 10, 11, 13, 15-24 and Exhibit A, shall survive the expiration or termination of these Terms.

T&C Version: 08.01.2020

[END OF TERMS AND CONDITIONS]

Confidential and Proprietary

Not to be disclosed to any person other than authorized representatives of the parties to this agreement without the express written consent of both parties.

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 applicable 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 these Terms, 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.

Confidential and Proprietary

Not to be disclosed to any person other than authorized representatives of
the parties to this agreement without the express written consent of both parties.

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]