



# Client Advertising and Marketing

## Campaign Terms of Service

These advertising and marketing campaign terms and conditions (“Terms”) shall apply to all print and digital advertisements and marketing campaigns and programs (“Advertisements”) that are submitted to Endeavor Business Media, LLC and its subsidiaries and affiliates (collectively “Endeavor” and sometimes referred to herein as “Publisher”) by the customer (“Client” and sometimes referred to herein as “Advertiser”) who has executed a statement of work, proposal, insertion order, agreement and/or similar document to which these Terms are attached or are stated to apply (“SOW”) and which Endeavor has accepted for publication and distribution. For purposes of these Terms, “Client” means the ultimate customer whose products or services are advertised or promoted under a SOW as well as any agent, broker, or other intermediary executing any SOW on behalf of a Client (sometimes referred to separately as “Agency”). For the avoidance of doubt, Client and its Agency, if any, shall be jointly and severally liable to Endeavor for any obligation, including payment, arising under a SOW and these Terms and for any breach by either of them of any representation, warranty, or other provision hereof. Execution of the SOW(s), including for the avoidance of doubt, submission of an insertion order for placement of advertising, with the Publisher constitutes acceptance of these Terms. These Terms automatically shall be deemed incorporated into the SOW(s) and all SOW(s) shall be deemed to constitute one agreement (the “Agreement”).

Terms and conditions shall control in the following order of priority in the event of any conflict between or among them: first, these Terms; second, any SOW identified as a statement of work or proposal signed by an authorized representative of Publisher; third, any SOW identified as an insertion order and accepted by Publisher; and fourth, any other SOW signed by an authorized representative of Publisher. Two or more provisions shall be deemed to conflict, or create an ambiguity or inconsistency, if and only if (a) they cover the same general substantive topic (e.g., indemnification obligations, limitations of liability, or warranties), and (b) no one such provision expressly excludes, supplements, or modifies such other provision(s) by expressly referencing the applicable section number(s) of such other provision(s) which are so excluded, supplemented, or modified. The Parties acknowledge and agree that this paragraph will control over any inconsistent or conflicting “priority” provision in any SOW or in any purchase order, oral instructions, reservation orders, blanket contracts, instructions or other document proposed or delivered by Client or Agency.

The effective date for these Terms with respect to a SOW is the date identified as the effective date in the SOW or, if no such date is identified, as of the date of the latest executed SOW between the Parties (the “Effective Date”). Endeavor, Client and any Agency are each a “Party” to these Terms and may be referred to herein collectively as the “Parties”.

# I. ENGAGEMENT; TERM; TERMINATION

**1.1.** Client hereby engages Endeavor to render the services (“Services”) and deliver any specified deliverables (“Deliverables”), and agrees to pay Endeavor the fees (“Fees”), in each case which are set forth in the SOW. Unless otherwise stated in the SOW, upon execution of the Agreement Endeavor may invoice Client for all amounts to be paid under the SOW. Except as expressly provided in the Agreement, in no event will Client be entitled to any refund of any amounts paid under the Agreement, including any prepaid amounts. The Services may be performed by Endeavor employees or by subcontractors on behalf of Endeavor.

**1.2.** Except as otherwise specified in the SOW, the term of the Agreement shall commence on the Effective Date and continue for a period of 12 months, unless earlier terminated pursuant to 1.3 below or renewed by mutual written agreement of the Parties (the “Term”).

**1.3.** Either Party may immediately terminate the Agreement (i) if the other Party materially breaches the Agreement and such breach has not been cured within 30 days of receipt of written notice of such breach, or (ii) in the event of the other Party’s bankruptcy, insolvency, liquidation, dissolution, receivership, or assignment for the benefit of creditors.

**1.4.** Unless otherwise provided in the SOW, the Agreement may not be terminated (in whole or in part) for convenience, nor may any Deliverable or Service, including for the avoidance of doubt, any advertising, promotion, email marketing, webinar, content creation, or other Deliverable or Service, be cancelled or rescheduled at any time without Endeavor’s prior written consent. Client acknowledges and agrees that, upon execution of the Agreement, Endeavor may begin allocating resources to Client’s engagement and incurring hard and soft costs in connection therewith, that if Client were to cancel or reschedule any aspect of the Agreement, Endeavor would also incur opportunity costs, loss of anticipated profits, and other indirect damages, and that quantifying such losses and other losses, such as damage to reputation, which Endeavor may suffer as a result of cancellation or rescheduling is inherently difficult. Therefore, the Parties agree that the following cancellation and/or rescheduling fees will apply as liquidated damages, and not as a penalty, and that such liquidated damages represent the Parties’ best estimate, and a reasonable measure, of Endeavor’s damages in connection therewith:

**(a)** If Client does nonetheless cancel any Deliverable or Service, or all or any of the Agreement, consistent with the requirements of the Agreement, the following liquidated damages (the “Cancellation Damages”) shall apply: (i) 50% of the amounts payable for the cancelled item(s) if cancellation takes place between the Effective Date and the earlier of (A) 90 days prior to the scheduled deployment, delivery, or other performance of the applicable canceled item(s), or (B) the first day of promotion by either Party of such canceled item; or (ii) at any time thereafter, 100% of the amounts payable for the cancelled item(s).

**(b)** If Client requests a change of a previously agreed delivery date (“Reschedule Request”), Endeavor may, in its discretion, accommodate such request and charge a rescheduling fee of 25% of the amount payable for such rescheduled item(s) (the “Rescheduling Damages,” and together with the Cancellation Damages, the “Liquidated Damages”). To the extent accommodating such Reschedule Request requires Endeavor to perform additional work and/or devote additional resources, Client will also pay all additional fees attributable to such additional work and/or resources at Endeavor’s then-prevailing hourly rates. If Endeavor cannot or does not accommodate a Reschedule Request, such Reschedule Request shall be deemed a constructive cancellation and the applicable Cancellation Damages shall apply. If the SOW specifies more than one Deliverable and/or Service, each Deliverable and Service shall be subject to separate Liquidated Damages.

# II. BILLING; PAYMENT

**2.1.** Payment is due within 30 days of invoice date, with any overdue amounts subject to interest at the rate of the lesser of 1.5% per month or the maximum rate permitted by law. All payments are due in United States Dollars (“\$”).

**2.2.** Fifteen percent (15%) of gross billing is permitted to the recognized advertising agencies on space, color and position charges, provided the Client's account is paid in full within thirty (30) days of invoice date. Publisher reserves the right to hold Client and/or its Agency jointly and severally responsible for payment. Without limiting Agency's joint and several liability for Client's payment and other obligations pursuant to the Agreement, Agency will (a) employ best efforts to collect and clear payment from Client on a timely basis, and (b) if requested by Endeavor, reasonably assist Endeavor in collecting payment from Client or obtaining Client's consent to dispense funds. Client will reimburse Endeavor for any and all costs, including collection agency fees, reasonable attorney fees and court costs, incurred by Endeavor in successfully collecting any delinquent amounts hereunder.

**2.3.** Invoices will be issued monthly throughout the course of any advertising or marketing campaign, upon completion of the activity within a given month. Client will be billed for lost frequency discount if, within a 12-month period from date of the first insertion, they do not use the amount of inventory upon which their billing rate was based. Client will be short-rated if within a 12-month period from the date of the first insertion they do not use the amount of space upon which their rates of been based. Client will be rebated if, within a 12-month period from the date of the first insertion, they have used sufficient additional space to warrant a lower rate.

**2.4.** Rates are subject to change without notice; provided, that rates for submitted insertion orders will be billed in accordance with the published rates at the time the insertion order is accepted by Publisher.

**2.5.** Client agrees to pay all taxes in connection with the Agreement, except that each Party shall be responsible for taxes based on its own net income, employment taxes of its own employees, and taxes on any property it owns or leases. Client agrees to reimburse and hold Endeavor harmless from any deficiency (including penalties and interest) relating to taxes that are the responsibility of Client hereunder and to pay or reimburse Endeavor for any amounts required by any governmental authority to be withheld from any payment to Endeavor hereunder.

### **III. PRODUCTION SCHEDULE; CLIENT RESPONSIBILITIES**

**3.1.** After execution of the SOW, the Parties may mutually agree to a production schedule outlining each step of the project and/or other details concerning the engagement ("Production Schedule"), in which case such Production Schedule, when mutually agreed by both Parties, shall be deemed a part of the SOW and shall be automatically incorporated herein and made a part hereof. If any request by Client would change the scope of the SOW (including the Production Schedule), as determined by Endeavor in good faith, then the Parties will promptly and in good faith jointly determine the effects that implementation of such request would have on the Fees, timeline, Deliverables, or any other term or condition of the SOW. Changes to the scope of the Services, Deliverables, Fees or other terms and conditions set forth in any SOW will be effective only upon execution of a written change order by authorized representatives of each Party ("Change Order"). If the Parties do not execute such a Change Order, Endeavor may in its discretion charge Client at Endeavor's then-prevailing hourly rates for any additional work performed and/or resources devoted to accommodate such request.

**3.2.** Client will cooperate with Endeavor as reasonably requested by Endeavor and will perform the responsibilities of Client set forth in the Agreement ("Client Responsibilities"). Endeavor will have no liability for any inability or failure to perform Services or to deliver Deliverables, or delay in performing Services or delivery of Deliverables, to the extent such inability, failure, or delay results from any Client or Agency failure, delay or error in providing such cooperation and/or performance or any approvals, consents, or materials contemplated by the Agreement ("Client Delay"). Endeavor is reserving ad and promotional inventory and will not be making it available to other clients. As a result, Client is responsible for the media purchased pursuant to the SOW and will be billed consistent with the terms of the SOW notwithstanding any Client Delay. Endeavor may also charge Client, and Client will pay as set forth above, additional fees if any Client Delay (a) causes Endeavor to perform additional work and/or devote additional resources beyond those contemplated by the applicable SOW (in which case such fees shall be based on Endeavor's then-prevailing hourly rates) or (b) in Endeavor's good faith judgment, renders any previously agreed delivery date or other milestone impossible or impractical (in which case such fees shall be the fees applicable to a "Reschedule Request" as defined and set forth in the applicable SOW or, if the SOW is silent as to Reschedule Requests, in Section I above). If Endeavor is required to modify the campaign start and billing period or cancel the campaign within 30 days of the reserved flight date due to Client Delay, Client may be charged a \$500 administrative fee in addition

to other fees applicable to Client under these Terms.

## IV. OWNERSHIP; LICENSES.

### 4.1. Ownership.

(a) Notwithstanding anything in the Agreement to the contrary, each Party shall retain and own all right, title, and interest, including all IP Rights, in and to all of its Pre-Existing IP.

(b) Unless otherwise stated in the SOW, as between the Parties, (i) Client shall own all right, title, and interest, including all IP Rights, in and to the Client Property, Client-Owned Deliverables, and Client-Owned Data, and (ii) Endeavor shall own all right, title, and interest, including all IP Rights, in and to the Endeavor-Owned Deliverables and Endeavor-Owned Data.

(c) Endeavor shall own all right, title, and interest, including all IP Rights, in and to all Lead Data, except that Endeavor and Client shall jointly own all right, title, and interest, including all IP Rights, in and to any Joint Lead Data, and each Party will be free to exploit such Joint Lead Data during and after the Term with no duty to account to the other Party.

(d) If an SOW provides for the delivery of Leads to a Client ("Lead Services"), and such Leads are provided to Client's Agency for data scrubbing or any other purpose in the course of Endeavor's performance of such Lead Services, nothing herein shall be construed to grant to such Agency any rights with respect to such Leads, and such agency is expressly prohibited from using (and Client shall be responsible for not permitting such Agency to use) such Leads for any purpose except the exercise of such non-agency Client's rights, on such non-agency Client's behalf and for such non-agency Client's sole benefit, in each case specifically as permitted in accordance with these Terms.

### 4.2 Licenses.

(a) Subject to Client's compliance with all terms and conditions in the Agreement, including Client's payment and confidentiality obligations, and except as otherwise set forth in the SOW, Endeavor hereby grants to Client, in addition to any license(s) to Lead Data which are mutually agreed upon by the Parties and set forth in the SOW:

in the case of any Web Consulting Deliverable or any modification or derivative work thereof, a License to use, copy, make derivative works of, and modify any of Endeavor's Pre-Existing IP and Endeavor-Owned Data which is and remains included or embodied therein, but in each case solely for Client's internal business purposes; and

in the case of any Client-Owned Deliverable (other than a Web Consulting Deliverable) or any modification or derivative work thereof, a License to use, copy, display, distribute, make derivative works of, and modify any of Endeavor's Pre-Existing IP and Endeavor-Owned Data which is and remains included or embodied therein, in each case whether for Client's internal or external business purposes, but in each case, solely without payment of direct compensation by any third party to Client (or any other party on Client's behalf) and Client agrees to not use any creative material, including banner ads, designed by Endeavor Business Media in any publication or website that directly or indirectly competes with Publisher; and

in the case of any Endeavor-Owned Deliverable, a License to use, copy, display, and distribute such Endeavor-Owned Deliverable, in each case whether for Client's internal or external business purposes but solely (A) in the form and substance delivered by Endeavor to Client, (B) without payment of direct compensation by any third party to Client (or any other party on Client's behalf), and (C) subject to any additional restrictions set forth in the SOW.

(b) If Client displays, distributes, or otherwise makes available to any third party, in whole or in part, any Endeavor-Owned Deliverable, or any work or other materials which include or incorporate any of Endeavor's Pre-Existing IP or any Endeavor-Owned Data (any such Endeavor-Owned Deliverables, Endeavor Pre-Existing IP, and/or Endeavor-Owned Data, collectively, the "Licensed Content"), Client will, if requested by Endeavor, include, in reasonably close proximity to the Licensed Content, a reasonably conspicuous (and in no event less conspicuous than any attribution Client provides to other contributors of similar content) attribution in a form reasonably

requested by Endeavor. Client shall not delete, obscure, or alter in any manner any of the proprietary information, copyright, trademark, or other attribution notices or legal disclaimer notices, if any, appearing on or with respect to any Deliverable, including any Licensed Content.

(c) Subject to Endeavor's compliance with all terms and conditions in the Agreement, including its confidentiality obligations, Client hereby grants to Endeavor and its affiliates a limited, non-exclusive, fully paid-up, sublicenseable (subject to the terms of the Agreement), worldwide license during the Term to use, have made, make, import, compile, decompile, disclose, copy, modify, create derivative works of, display, and distribute the Client Property, in each case solely for purposes of exercising its rights and performing its obligations pursuant to the Agreement. Client is solely responsible for obtaining its own licenses to any Third-Party Dependent Software.

## V. CONFIDENTIALITY

**5.1.** Each Party will use any confidential, proprietary, and/or nonpublic information, which for the avoidance of doubt includes any information or data that results from the services under any SOW ("Confidential Information") of the other Party or its affiliates solely for the purpose of and to the extent necessary for performing under the Agreement, will disclose such Confidential Information only to its employees, subcontractors and agents (for each of whose acts or omissions with respect to such Confidential Information the receiving Party will be liable), in each case with a need to know the same for such purposes, and will use at least the same degree of care in protecting the confidentiality of such Confidential Information as it uses in protecting its own information of a similar type, but in no event less than a reasonable standard of care.

**5.2.** The restrictions set forth above shall not apply to the extent that any Confidential Information (a) has been rightfully received by the receiving Party from a third party or public source without confidentiality limitations; (b) was known to the receiving Party, without confidentiality limitations, prior to its first receipt by the receiving Party from the disclosing Party; (c) is or becomes known publicly through no fault of the receiving Party; (d) is independently developed by the receiving Party without use of the Confidential Information; or (e) is required to be disclosed in the context of any administrative or judicial proceeding, provided that the receiving Party provides the disclosing Party prompt prior written notice of such required disclosure and cooperates as reasonably requested by the disclosing Party to oppose or limit any such required disclosure.

**5.3.** The Parties agree that a breach of the confidentiality obligations of this section will cause irreparable harm to the disclosing Party. Either Party may seek injunctive relief in any action to enforce this section and the other Party hereby waives the claim or defense that the enforcing Party has an adequate remedy at law.

## VI. REPRESENTATIONS AND WARRANTIES; LIMITATION OF LIABILITY

### **6.1. Reps and Warranties; Disclaimer.**

(a) Each Party represents, warrants and covenants that (i) the Agreement is a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, without violating any contract to which it is a party (and to the extent the Agreement is executed by an Agency on behalf of any client or customer, such Agency represents and warrants that it has the authority to execute the Agreement (including, for clarity, all SOWs) on such client's or customer's behalf and to act on behalf of such client or customer, and only within the scope of such agency, with respect hereto); (ii) it will comply with all laws, statutes, regulations, rules and ordinances, including the CAN SPAM Act, California Consumer Privacy Act of 2018 (the "CCPA"), Canadian Anti-Spam Legislation

("CASL"), Data Protection Act 2018 and related regulations ("UK GDPR"), the European Union data protection directives and regulations ("EU GDPR"), and each other federal, state, local and foreign Law relating to unsolicited e-mail, data protection or privacy (collectively, "Laws") applicable to its performance of its obligations under the Agreement and its use of any Deliverables and any Lead Data; and (iii) it has obtained all rights and permissions necessary for it to perform its obligations hereunder and to grant the rights it grants hereunder.

**(b)** Endeavor represents and warrants that it will perform the Services in a professional and workmanlike manner (with Client's sole remedy for breach, notwithstanding Section 6.2, being Endeavor's re-performance of any non-conforming Services if Client provides written notice of same to Endeavor within 30 days of performance of such Services), and that the Deliverables (except any Third-Party Dependent Software), as and when delivered to Client by Endeavor, without modification or alteration by Client, when properly used for the purpose and in the manner specifically authorized by the Agreement, and except to the extent that same were Developed based on specifications, information, or Property provided or made available by or on behalf of Client, do not infringe, misappropriate or otherwise violate ("Infringe") any third-party IP Rights, are not libelous, defamatory, obscene, pornographic, abusive, harassing or threatening, do not violate any third party's privacy, publicity, or contractual rights, do not constitute false or misleading advertising, and do not violate any applicable Laws. In the event of any actual or alleged Infringement of any third-party rights by any Deliverable(s), Endeavor shall have the option (but not the obligation), in its sole discretion with respect to each Deliverable, to do any one or more of the following: (i) procure the right for Client to continue using it, (ii) make any adjustments as may be necessary for it to become non-Infringing, and/or (iii) replace any Infringing Deliverable, or portion thereof, with non-Infringing substitutes.

**(c)** Client (including, for clarity, Agency) represents and warrants that (i) the Client Property, as and when provided or otherwise made available to Endeavor by or on behalf of Client and when used by or on behalf of Endeavor in accordance with the Agreement, does not Infringe any third-party IP Rights, is not libelous, defamatory, obscene, pornographic, abusive, harassing or threatening, does not violate any third party's privacy, publicity, or contractual rights, does not constitute false or misleading advertising, and does not violate applicable Law; (ii) no Creative or other Client Property will include, contain, or be delivered or bundled with any viruses, worms, or other malicious or damaging code, any time bombs, Trojan horses, drop-dead devices, or other disabling or self-help devices, or any other malware or corrupting elements of any kind; (iii) without Endeavor's prior written approval in each instance, no Creative or other Client Property will include, contain, or be delivered or bundled with any cookies, web beacons, tracking scripts, tracking pixels, or other scripts or code of any sort which facilitate the tracking of any user or user behavior or the collection or storage of any Lead Data; and (iv) Client (including, for clarity, Agency) and all Client Property (including all Creative) will comply with all policies, practices, and procedures communicated by Endeavor to Client from time to time. In addition, Endeavor reserves the right, in its sole discretion and at any time, to reject, cancel, limit, omit, remove, or edit (including inserting the word "advertisement" or a similar word or phrase above or below the copy to distinguish it from any editorial product) any Client Property (including any Creative), or any link to any other materials in, or code of, any Client Property (including any Creative), in whole or in part, which Endeavor in its sole discretion deems inappropriate, unlawful, or contrary to Endeavor's policies or practices, whether or not the same Client Property has previously been accepted or run; such cancellation or rejection by Endeavor shall not preclude payment on similar advertising previously run or services previously performed.

**(d)** EXCEPT AS EXPRESSLY STATED ABOVE IN THIS SECTION 6.1, NEITHER PARTY MAKES ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CONCERNING THE SERVICES, THE DELIVERABLES (INCLUDING ENDEAVOR'S ADVERTISING SPACES, INVENTORY OR PLACEMENTS), AND/OR SOFTWARE (ALL OF WHICH ARE PROVIDED AS-IS AND AS-AVAILABLE), INCLUDING FOR FITNESS FOR A PARTICULAR USE, MERCHANTABILITY, INFORMATIONAL CONTENT, PERFORMANCE (INCLUDING RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS) OR NONINFRINGEMENT, AND EACH PARTY EXPLICITLY DISCLAIMS THE SAME TO THE FULLEST EXTENT PERMITTED UNDER LAW.

## **6.2 Indemnification.**

**(a)** Each Party (the "First Party") agrees to indemnify, defend and hold harmless ("Indemnify") the other Party, its affiliates and all of their respective officers, directors, equity holders, employees, independent contractors, agents and representatives (collectively, "Related Parties"), from and against all third-party actions, proceedings, damages, penalties, claims, demands, liabilities, fees (including reasonable attorneys' fees), costs or losses of any kind (collectively, "Claims") threatened or asserted against or otherwise incurred by any of them, but in each case solely to the extent such Claims arise from the First Party's breach of Section 5 (Confidentiality), Section 6.1 (Warranties) or Section 7 (Data Privacy).

(b) A Party seeking indemnification pursuant to Section 6.2(a) (“Indemnitee”) shall provide the other Party (“Indemnitor”) with (i) prompt, reasonable written notice of any circumstances which may give rise to all relevant Claims, (ii) reasonable cooperation as requested by Indemnitor, at Indemnitor’s expense, in the defense of such Claims, and (iii) the right to control the defense and settlement of any such Claim; provided that (A) Indemnitor shall not, without the prior written approval of Indemnitee, settle or dispose of any Claim in any manner that adversely affects Indemnitee’s rights or interests, and (B) Indemnitee shall have the right to participate in the defense, with counsel of its own choosing and at its own expense.

### **6.3 Limitations of Liability.**

#### **EXCEPT WITH RESPECT TO A BREACH OF SECTION 5 (CONFIDENTIALITY), INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 6.2, LIQUIDATED DAMAGES PURSUANT TO SECTION 1.4, OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS:**

(a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS RELATED PARTIES FOR ANY CLAIM IN CONNECTION WITH THE AGREEMENT (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) FOR MORE THAN AN AMOUNT EQUAL TO THE FEES PAID (INCLUDING ANY AMOUNTS PROPERLY INVOICED BUT NOT YET PAID) UNDER THE AGREEMENT DURING THE 12-MONTH PERIOD (OR, IF SHORTER, THE DURATION OF THE TERM) PRIOR TO THE MAKING OF SUCH CLAIM; AND

(b) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, LOSS OR EXPENSES OF ANY KIND, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, AND WHETHER OR NOT FORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

### **6.4. Other Remedies.**

If any SOW refers to a “guarantee” (or similar promise) as to number of Leads, number of attendees, number of participants, viewability, or any other matter (any of the foregoing, a “Guarantee”), such language shall be deemed only to require Endeavor to make commercially reasonable efforts to achieve the applicable agreed-upon threshold for such metric. Without limiting Section 6.3, Client’s sole remedy for (i) Endeavor’s failure to achieve any Guarantee, (ii) Endeavor’s under-delivery of impressions or other failure to meet any advertising or marketing campaign conditions specified in any SOW due to circumstances within Endeavor’s control, or (iii) any typographical or other error or omission in any advertisement or promotion shall be, at Endeavor’s option in its sole discretion, either: (x) one or more (as reasonably determined by Endeavor) make-goods or any similar additional effort to correct the applicable shortfall, discrepancy, or error (any of the foregoing, a “Make-Good”), at no additional cost to Client, or (y) reduction of the fees owed by Client (or, in the case of prepaid fees, a refund) in a pro rata amount reasonably determined by Endeavor to reflect the applicable shortfall, discrepancy, or error. Notwithstanding the foregoing, the Parties acknowledge and agree that predictability, forecasting, and conversion may vary with respect to CPA Deliverables, CPL Deliverables, and CPC Deliverables, and that Endeavor will have no liability (including the remedies set forth in clauses (x) and (y) above), for failure to achieve any delivery or Guarantee.

Every individual person or entity about whom Client receives any Lead Data shall constitute a Lead for purposes of any Lead Guarantee or target, and Client (and, for clarity, Agency) shall have no right to reject any Lead for any reason, unless (and solely to the extent) such Lead fails to satisfy any eligibility requirements expressly specified in the applicable SOW executed by all Parties. Client agrees to pay for all impressions and other Services and Deliverables actually delivered by Endeavor in accordance with the terms of payment, even if same are delivered as Make-Goods after the originally anticipated end date of the applicable campaign or engagement.

## **VII. CERTAIN PRIVACY-RELATED OBLIGATIONS**

**7.1. Required Email Content.** To the extent the Services or Deliverables include the distribution of promotional e-mails to third parties, Client agrees to provide the following to Endeavor: (a) Client’s postal address; (b) a functioning unsubscribe mechanism which, when activated by a user, will actually and permanently remove the user’s email address from Client’s database within five (5) business days of receipt of user’s request; and (c) any other information necessary and/or reasonably requested by Endeavor to comply with

applicable Laws, including, but not limited to, CCPA, the CAN SPAM Act, CASL, UK GDPR, and EU GDPR.

**7.2. Suppression List.** To the extent the Services or Deliverables include the distribution of promotional e-mails to third parties, (a) Client further agrees (i) to maintain and to deliver to Endeavor, within five (5) business days prior to the start of a promotional e-mail campaign, a true, correct, and complete suppression list containing email addresses of those individuals who have opted out or unsubscribed from receiving communications from Client or any of its applicable affiliates, subsidiaries, or divisions (the "Suppression List"), and (ii) for the duration of the campaign, to provide to Endeavor an updated Suppression List, in a format specified by Endeavor, immediately following each instance that a user has requested to be opted out or unsubscribed, and (b) to the extent that any e-mails will be sent to any e-mail addresses provided by Client, Client represents, warrants, and covenants, that Client has obtained all consents and permissions required by applicable Laws for such e-mails to be sent to such addresses, and that no such email address appears on any applicable Client Suppression List.

**7.3. Privacy Policies, CCPA and GDPR.** Each Party will post its privacy policies, which will be consistent with all applicable Laws, on its website(s) and will comply at all times with its privacy policies in connection with the Agreement, including in its use of any Lead Data. Each Party agrees, upon the request of the other Party, to comply with the other Party's request to enter into any further amendments to this Agreement to the extent reasonably necessary to comply with applicable data privacy that may be enacted or amended from time to time.

**(a)** Where the Parties are subject to the provisions of the UK GDPR or EU GDPR as a result of processing personal data pursuant hereto, the Parties agree that each Party acts as a controller in respect of Lead Data, Joint Lead Data, and Client-Owned Data; each Party shall only process Lead Data, Joint Lead Data, and Client-Owned Data in compliance with applicable laws and shall not cause itself or the other Parties to be in breach of either the UK GDPR or EU GDPR; each Party shall provide the other Parties with reasonable details of any inquiry, complaint, notice or other communication it receives from any supervisory authority relating to its processing of Lead Data, Joint Lead Data, and Client-Owned Data, and act reasonably in co-operating with the other Party in respect of its response to the same; and each Party shall act reasonably in providing such information and assistance as the other Parties may reasonably request to enable them to comply with their own obligations under the GDPR. Where Client or Agency receives Endeavor-Owned Data, Joint Lead Data or Client-Owned Data from Endeavor, each shall use such Endeavor-Owned Data, Joint Lead Data or Client-Owned Data only for the purpose for which it was provided, or as necessary to comply with its requirements under any applicable Law, and shall maintain all appropriate technical and organizational measures to ensure the security of the Endeavor-Owned Data, Joint Lead Data or Client-Owned Data, including protection against unauthorized or unlawful processing.

**(b)** Effective January 1, 2020, each of the Parties will comply with the California Consumer Privacy Act of 2018 (the "CCPA"), including upon the request of the other Party, comply with the other Party's request to enter into any further amendments to this Agreement to the extent reasonably necessary to comply with CCPA. To the extent that Client (and/or Agency) receives from Endeavor any personal information (as defined in the CCPA) of any "consumer" (as defined in the CCPA) for processing (as defined in the CCPA) pursuant to one or more SOW, Client and/or Agency shall promptly (and, in any case within seven (7) days of receipt) comply with Endeavor's written instructions associated with responding to an individual's request to exercise their privacy rights with respect to their personal information.

**7.4. Online Behavioral Advertising and Tracking.** Notwithstanding anything to the contrary in the SOW or any other provision of the Agreement, (a) Endeavor will have no obligation to comply with any self-regulatory or industry guidelines or practices with respect to Online Behavioral Advertising ("OBA") (as defined below), except, if expressly required by the SOW, the cross-industry Self-Regulatory Principles for Online Behavioral Advertising (the "Principles"), (b) in no event will Endeavor be required to indicate its adherence to the Principles in any Privacy Policy or other portion of any Endeavor website or otherwise, and (c) Client shall be required to provide the notice described in Section II.A(2)(a) of the Principles and Endeavor will have no obligation to provide the notice described in Section II.B of the Principles. "OBA" means the collection of data online from a particular computer or device regarding web viewing behaviors over time and across non-affiliate web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such web viewing behaviors.



## VIII. CERTAIN TERMS SPECIFIC TO PRINT AND DIGITAL DISPLAY ADVERTISING

This Section 8 applies only to any print advertising and/or digital display advertising described in any SOW.

**8.1 Ad Materials.** Client must deliver all Creative to Endeavor or its designee at least ten (10) business days prior to the closing date for the applicable issue of publication in the case of print advertising and at least five (5) business days prior to the campaign start date in the case of digital or rich media Creative, third-party tags or Creative for newsletters or e-blast campaigns. Endeavor shall make a good faith effort to comply with any request for modification to the Creative for an ongoing campaign, if received from Client with at least two (2) business days' prior written notice. For clarity, Creative first provided by or on behalf of Client to Endeavor under the Agreement, including any and all IP Rights therein, shall constitute Client Property for purposes of the Agreement. Unless Client has paid a placement premium (or unless otherwise provided in the SOW), positioning of advertising is in Endeavor's sole discretion. Endeavor reserves the right in its sole discretion to designate the general and classified rates for any advertising. Unless specifically provided in the applicable SOW signed by all Parties or otherwise with Endeavor's prior written consent, no advertising pursuant to any SOW may promote any affiliate of the Client or any third party.

**8.2 Third-Party Ad Serving and Controlling Measurement.** Notwithstanding any approval by Endeavor of a Client 3PAS as provided below, all impressions based campaigns as stated within any SOW, and all measurements used for invoicing advertising fees in connection with the Agreement (the "Controlling Measurement"), will be determined, calculated and billed from the Endeavor ad server reports, regardless of whether Advertiser utilizes a third-party ad server ("3PAS") for centralized advertising campaign management and reporting. Unless Endeavor grants its prior written approval, in its sole discretion, Client (and, for clarity, Agency) may not use any 3PAS on any Endeavor property and may not substitute any 3PAS that has not been so approved for any approved 3PAS. Upon Client's (or, for clarity, Agency's) reasonable written request, Endeavor will, within a reasonable time, provide Client reporting relating to the applicable campaign that is reasonably sufficient to allow Client to confirm the Controlling Measurement. If a discrepancy of greater than 10% exists between the Controlling Measurement and the corresponding measurement by Client's 3PAS (if any), the Parties will negotiate in good faith a potential adjustment, if mutually agreed by the Parties, to the Controlling Measurement.

## IX. GENERAL TERMS

**9.1.** The Agreement constitutes the entire agreement between Client and Endeavor, supersedes all prior agreements or representations concerning the subject hereof, and may not be amended in any way except (a) by written agreement signed by both Parties, or (b) by Endeavor as follows: Endeavor may, in its sole discretion, update, revise, change, modify, or amend (any of the foregoing, a "Change") these Terms at any time, and Client will be bound to such Changes, subject only to the following requirements: (i) any such Changes will have prospective effect only, unless retroactive effect is legally required; (ii) in the event of a Change to these Terms which has a materially adverse effect on Client's rights and obligations under the Agreement, taken as a whole (any such Change, a "Material Change"), Endeavor will provide notice to Client of such Material Change, which notice obligation may be fulfilled by Endeavor posting a conspicuous notice on its applicable website for at least 30 days, stating that these Terms and Conditions have been updated (or words to a similar effect); and (iii) Client may, within 30 days of the date a Material Change became effective (as evidenced by the "Last updated" date at the end of the Terms), terminate the affected portion of the Agreement upon 30 days' prior written notice to Endeavor. The Agreement shall not be assignable, except that Endeavor shall have the right to assign the Agreement to any of its affiliates or to any purchaser of all or substantially all of the stock or assets of, or any other successor in interest to, Endeavor (or its applicable division).

**9.2.** The Agreement shall be governed and construed in accordance with the laws of the State of Tennessee, and the state and federal courts located in Davidson County, Tennessee shall have exclusive jurisdiction of any actions arising in connection herewith, and each Party hereby submits to the jurisdiction of same.

**9.3.** Neither Party shall be responsible for any failure or delay in performing its obligations (other than payment obligations) under the Agreement if such failure or delay arises from any cause or causes beyond its reasonable control.

**9.4.** Upon expiration or earlier termination of the Agreement, the following provisions of these Terms will survive expiration or earlier termination of the Agreement: Sections I, 1.4 (Liquidated Damages), IV, 4.1 (IP Ownership terms), V (Confidentiality), VI (Representations and Warranties; Limitations of Liability), VII (Privacy Policy, CCPA & GDPR), IX (General Terms) and X (Definitions).

**9.5.** Any notices to either Party under the Agreement will be in writing and delivered by hand or sent by nationally recognized messenger service or by registered or certified mail, return receipt requested, to the address set forth in the SOW for such Party or to such other address as that Party may hereafter designate by notice, in each case with a copy to such Party's Legal Department, and notice will be effective when received.

## **X. DEFINITIONS**

"Client-Branded Deliverable" means any Deliverable displaying or including trademarks and/or branding solely of Client (but not Endeavor).

"Client-Owned Data" means all Market Research Data that are included or embodied in any Client-Owned Deliverable, excluding all General Industry Data.

"Client-Owned Deliverables" means all Client-Branded Deliverables and Web Consulting Deliverables, in each case excluding Endeavor's Pre-Existing IP, Endeavor-Owned Data, and Joint Lead Data.

"Client Property" means any and all Property (other than Lead Data) which is provided or made available by or on behalf of Client to Endeavor under the Agreement, including any and all IP Rights therein.

"Creative" means all creative material or similar Property provided or made available to Endeavor by or on behalf of Client for use in or with any advertising, promotion, and/or marketing pursuant to the Agreement.

"Developed" means possessed, owned, controlled, created, developed, obtained, or acquired.

"General Industry Data" means all Market Research Data which are not directly related to Client, including general industry data and information relating to the operation and methodologies of social networking sites and other non-Client websites.

"Impression" or "impression" means an ad request that is received and counted by the ad serving software used by Endeavor.

"Endeavor-Branded Deliverable" means any Deliverable that is not a Client-Branded Deliverable.

"Endeavor-Owned Data" means (i) all Market Research Data included or embodied in any Endeavor-Owned Deliverable, (ii) all General Industry Data and any portion(s) of any Client-Owned Deliverable reflecting, incorporating, or based on General Industry Data, and (iii) all Lead Data (other than Joint Lead Data).

"Endeavor-Owned Deliverables" means the Endeavor-Branded Deliverables, excluding the Client Property, Web Consulting Deliverables, and Joint Lead Data.

"IP Rights" means copyrights, patents, trademarks, trade secrets, rights of attribution, integrity, and other moral rights, Confidential Information (as defined below), and all other intellectual property or proprietary rights of any kind under applicable law.

"Joint Lead Data" means (i) any Lead Data which Endeavor delivers directly to Client (it being understood that delivery to Client's third-party email deployment vendor shall not be deemed a delivery directly to Client) and (ii) any Lead Data which is collected from Leads by Client (but not by Endeavor, whether on behalf of itself or on behalf of Client) in connection with the Agreement pursuant to an arrangement mutually agreed upon by Endeavor and Client.

"Lead" means any existing or prospective customer, client, participant, respondent or end user, in each case excluding Client and Endeavor.

"Lead Data" means all information collected from or about a Lead which is obtained, provided or used in connection with any Deliverable or Services.

"License" means a non-exclusive, non-transferable, nonassignable, nonsublicenseable, perpetual, worldwide license.

"Market Research Data" means all data, research results, market and/or industry data and other information gathered, created, or compiled by Endeavor in connection with the Services, in each case other than Lead Data.

"Pre-Existing IP" of a Party means all IP Rights (and the Property associated therewith) developed by such Party (i) prior to the Term or (ii) during the Term except as Developed solely and specifically in connection with the Agreement. All IP Rights (and the Property associated therewith) developed by any Endeavor Supplier, in which such Supplier (or any of its direct or indirect Suppliers) retains any right, title, and/or interest, shall be deemed to constitute Pre-Existing IP of Endeavor for purposes of the Agreement.

"Property" means creative or audiovisual works, content, images, graphics, graphs, charts, tables, texts, formats, names, images and likenesses, characters, information, ideas, data, sound recordings, logos, artwork, video clips, software, code, website content, technology, research, databases, documentation, and other information or materials in any format or medium, whether now existing or hereafter invented, developed or discovered.

"Supplier" of a Party means any freelancer, subcontractor, software or data provider, supplier or other third party who licenses or otherwise provides or makes available to such Party IP Rights and/or Property relevant to the Agreement.

"Third-Party Dependent Software" means any third-party software to which Client must obtain its own license pursuant to the SOW.

"Web Consulting Deliverable" means a Deliverable by or on behalf of Endeavor to Client pursuant to Endeavor's delivery of Web Consulting Services under the Agreement.

"Web Consulting Services" means search engine optimization, e-listening, social media, online media buy, and paid search engine marketing services.