

## ADLAB'S STANDARD TERMS AND CONDITIONS

These terms and conditions (the "Terms and Conditions") are between AdLab Marketing LLC, a California corporation ("AdLab"), and Client who uses one or more of AdLab's services and/or software ("Client"). By using any of AdLab's services and/or software or executing any PFSA, Client understands, confirms, and agrees to the terms of these Terms and Conditions, and any updates to the Terms and Conditions that Client is given any notice of, electronically or otherwise.

### 1. PROJECT DESCRIPTION

A description of the services AdLab will provide to Client hereunder is contained in a Project Functional Specification Addendum ("PFSA"). Client agrees to be bound by the terms of any applicable PFSA. These Terms and Conditions shall apply to and control all services performed by AdLab, whether in connection with a PFSA or not, unless agreed otherwise in writing. Projects are delivered in different phases ("Milestones"), as defined in the PFSA. Client acknowledges that estimated dates of completion for Milestones in a PFSA are estimated and not a guaranteed.

Milestones consist of numerous FUNNELS ("FNL") and tasks ("Tasks"). FNLs and Tasks are smaller sections of each Milestone and are defined in the PFSA. Specifically, FNLs are the functionalities shown in the respective tables in the PFSA. Tasks are listed under each FNL table.

### 2. REVISIONS AND CHANGE ORDERS

**Quality Assurance:** After AdLab's internal testing ("Internal QA"), Client shall have a reasonable opportunity, not to exceed five (5) business days, to use and test Tasks and to report any issues, or bugs ("Phase 1"). If during Phase 1 (a) Client rejects advertising material or communicates to AdLab a failure of such Task to meet design criteria set forth in the PFSA ("Acceptance Criteria") and (b) AdLab determines such Task does not substantially meet Acceptance Criteria (hereinafter (a) and (b) in combination are "Ad Rejection"), AdLab shall make changes necessary to bring such task into conformance with Acceptance Criteria within the five (5) business days following Phase 1 ("Phase 2"). Phase 1 and Phase 2 together shall be referred to as "External QA". In all instances other than Ad Rejection, Client shall be deemed to have accepted a Task by the end of Phase 1 and the Task shall be deemed complete.

**Change Orders:** Any modification or correction to advertising material requested by Client other than Ad Rejection is considered a "Change Order". AdLab is not obligated to perform a Change Order that it determines at its sole discretion to not be feasible. If AdLab accepts a Change Order, then AdLab will inform Client of the increased charges and delays that this Change Order will cause. Client then has the option to proceed with the Change Order. If Client chooses to proceed, then, AdLab will append the new change requests, cost, and timelines to the PFSA in a change order document ("COD") as an attachment to the PFSA. Client shall pay the initial down payment defined in the COD and AdLab will commence work per the COD. Any Change Order may delay or postpone all Milestones specified in the PFSA. AdLab is not required to make any changes during External QA beyond those required under this section. Client may at AdLab's sole discretion be required to accept any update(s) made to AdLab's Software or other services.

**Completion:** A Milestone is deemed achieved upon Client's acceptance of all Tasks in a Milestone. Once a Milestone is achieved, Client shall execute a form acknowledging Milestone achievement ("Acceptance

Form”) and shall make the payment(s) which became due and payable to AdLab upon completion of such Milestone, as specified in the PFSA.

### 3. ADLAB SOFTWARE AND LICENSE

**Software Defined:** “Software” is defined to include without limitation any code, whether developed or provided by AdLab, in any programming language; any design work, whether developed or provided by AdLab, in any format; and all graphics, photos, images, or icons that are created or provided by AdLab. The data in a database that is created by Client is not part of the Software. All graphics, photos, images, icons, HTML code, CSS code, or software codes that are provided by Client to be used in the Project are not considered as part of the Software and remain the property of the Client. All copyrighted content, graphics, photos, images, icons, codes, and systems that are provided by a third party (like a brand manufacturer) to be used on Client’s website are subject to the copyright holder’s usage policy and if such policy does not exist or not provided then they will remain the property of providing third party.

**License:** AdLab hereby grants Client a revocable, personal, non-transferable and non-exclusive right and license to use the Software (the “License”). Client may not directly, or through a third party do any of the following: copy, modify, use a modified version of, create a derivative work from, resell, duplicate, copy, sell, trade, exploit for commercial or private purposes, reverse engineer, or reverse assemble any portion of the Software, use of the Software, or access to the Software; otherwise attempt to discover any source code; and/or sell, assign, sublicense, grant a security interest in or otherwise transfer any right in Software. Client will not access Software other than through the interface provided by AdLab to access Software.

**Assignment:** Client may not assign or otherwise transfer any rights or obligations relating to Software or license(s) and their benefits under these Terms and Conditions to any party without the written consent of AdLab, which consent can be withheld at AdLab’s sole discretion. Any consent provided by AdLab shall be in writing executed by all parties including the assignee or successor whereby such assignee or successor agrees to be bound to these Terms and Conditions and the PFSA.

### 4. BROWSER COMPATIBILITY

Client acknowledges that AdLab only supports and tests systems for the last two versions of browsers developed by IE, Firefox, Chrome, and Safari as of the date of the execution of these Terms and Conditions (if executed), execution of the PFSA, or commencement of work, whichever is earlier, and no other browsers. If compatibility changes on future versions of these browsers, Client shall be required to retain AdLab and pay AdLab’s charges to resolve compatibility issues.

### 5. AUTHORIZATION AND COOPERATION BY CLIENT

Client hereby authorizes AdLab to commence work described in the PFSA, if any, and agrees to cooperate with AdLab by using its best efforts and by making available to AdLab all of the reasonably necessary materials, content, concepts, access to FTP or control panels ad accounts, social media profiles, media assets, and any other resources needed by AdLab to commence its services under these Terms and Conditions. Failure by Client to provide such items in a timely manner shall result in delays in the completion of the various Milestones and the deadlines approximated by AdLab, which AdLab is not liable for.

## 6. PAYMENT TYPES AND TERMS

(A) Project payments (also known as “PAYMENTS TOWARDS INSTALLATION FEES” in the PFSA) are those set forth in PFSA’s Project Payments Schedule (“Project Payments”). Except as otherwise set forth herein, if any Project Payments are not received on due dates, then, in addition to and not excluding any other remedies available to AdLab, AdLab may at its sole discretion (a) deem Client in breach of these Terms and Conditions, any applicable PFSA, and/or any other applicable agreement of the parties, (b) stop work and change Milestone dates, (c) demand (and Client must pay) fees that AdLab determines to be owed at its sole discretion, including all Termination Charges (as defined below), and/or (d) demand advance payment for future services.

(B) Recurring payments (also known as “PAYMENTS TOWARDS RECURRING FEES” in the PFSA) are for ongoing services and licenses listed in PFSA under the Recurring Service and License Payments Schedule or similar section, including without limitation: monthly retainers for running Facebook Ads, Instagram Ads, Creative, Design, Copywriting, or any other ongoing monthly services or softwares (collectively referred to as “Service and License Payments”). Except as otherwise set forth herein, if any Service and License Payments are not received in full on due dates defined on AdLab invoices, then, in addition to and not excluding any other remedies available to AdLab, AdLab may at its sole discretion, (a) deem Client in breach of these Terms and Conditions, any applicable PFSA, and/or any other applicable agreement of the parties, (b) discontinue and disconnect all the services and Software provided by AdLab, (c) demand (and Client must pay) fees that AdLab determines to be owed at its sole discretion, including all Termination Charges (as defined below), and/or (d) demand advance payment for future services. AdLab also reserves the right to charge Client a Two Hundred Fifty Dollar (\$250.00) reactivation fee payable by Client if the Service and Software is disconnected as a result of a lack of payment.

(C) Recurring marketing fees are for ongoing marketing services listed in PFSA under the Recurring Marketing Management Payment Schedule or similar section, including without limitation: Facebook Advertising, Instagram Advertising, “Paid Text Campaign (PPC System)” fees, “Banner Remarketing” fees, (collectively referred to as “Marketing Payments”). Recurring marketing management fees are expected to be received on due dates. Except as otherwise set forth herein, if Marketing Payments are not received on due dates defined on AdLab invoices, then, in addition to and not excluding any other remedies available to AdLab, AdLab may at its sole discretion, (a) deem Client in breach of these Terms and Conditions, any applicable PFSA, and/or any other applicable agreement of the parties, (b) discontinue and disconnect all the services and Software provided by AdLab, (c) demand (and Client must pay) fees that AdLab determines to be owed at its sole discretion, including all Termination Charges (as defined below), and/or (d) demand advance payment for future services.

Any and all payments made by Client to AdLab under these Terms and Conditions are non-refundable. All maintenance and technical support not explicitly provided for herein or in a PFSA are subject to regular Design or Engineering charges as set forth in the PFSA.

All fees attributable to declined credit cards, wire transfers, and bounced checks by Client are considered expenses and will be invoiced to Client with no requirement for Client approval. Chargebacks, Declined Credit Cards, Wire Transfers with Fees, and bounced checks are subject to Payments are due as set forth in the PFSA, or upon receipt of any invoice if not specified in a PFSA, unless otherwise agreed in writing. A 1.5% per month finance charge or the maximum charge allowed by law, whichever is less, will be incurred on invoice(s) 30 days or more past due. AdLab may change billing practices, including, but

not limited to, the date on which such billing will occur and the types of charges that will be included in such bills at any time.

Where Client agrees to a minimum commitment period in a PFSA with AdLab, Client may not cancel such agreement without paying to AdLab all Termination Charges (as defined below), in addition to (a) the difference between the full retail cost of the project, and the discounted and/or reduced price that is charged to Client, as may be set forth in the PFSA Project Cost table; (b) the entirety of the amount that would have been paid by Client to AdLab had there been no termination; (c) the balance for the remainder of the month in which the cancelation is received

As a service provider AdLab does not extend refunds for cancellations or performance. Once a charge has been placed on a credit card there are no refunds, charge-backs, credits, and/or reversals. If a charge-back occurs, you will be charged 15% administration fee or \$500 (whichever is greater) plus amount of any bank charges. Either party may cancel by 30 day written notice (provided via e-mail to AdLab at [hello@adlabonline.com](mailto:hello@adlabonline.com)).

If for any reason AdLab has to collect on any outstanding debt from the client, the client agrees to pay all cost associated with debt collection.

## **7. TAXES**

If at any time, under the laws of the United States, any state or any political subdivision thereof, a tax or excise or other tax (except income tax), however described, is levied or assessed against AdLab on account of any sum to be paid under these Terms and Conditions, all such tax or excise or other taxes shall be paid by Client. Client shall pay the amount thereof within thirty (30) days after demand thereof accompanied by delivery to Client of a copy of any tax statement.

## **8. DELAYS**

Except as otherwise set forth herein, if Client unreasonably delays responding to AdLab's requests, and such delay prevents the AdLab's work or services hereunder from moving forward, then, in addition to and not excluding any other remedies available to AdLab, AdLab may at its sole discretion, (a) deem Client in breach of these Terms and Conditions, any applicable PFSA, and/or any other applicable agreement of the parties, (b) cancel, disconnect, and/or discontinue any existing projects and/or services, (c) move any Milestone(s), (d) adjust any deadlines or time frames as it deems necessary, regardless of the length of Client's delay, (e) may terminate any agreement between the parties, including any PFSA or these Terms and Conditions.

## **9. INDEMNITY**

Client agrees to indemnify, defend and hold AdLab and its subsidiaries, affiliates, directors, officers, agents, employees, partners, shareholders, predecessors, successors, assignees, licensees and licensors harmless from and against any and all losses, damage, liability, claim, demand, suit, cause of action, debt and expense, including reasonable attorneys' fees, due to, in connection with, or arising out of services provided by AdLab to Client under these Terms and Conditions or otherwise, Client's use of or connection with the services provided by AdLab, Client's violation of any and all terms of these Terms and Conditions, or Client's violation of any rights of any third party.

## **10. TERMINATION**

Client may cancel these Terms and Conditions at any time without penalty if Client pays AdLab for all services, licenses, projects, project payments, charges set forth in these Terms and Conditions, the PFSA, and elsewhere, and any other charges AdLab has incurred as of the date of the termination, plus any reasonable expenses for winding up services, if any (“Termination Charges”). Termination Charges shall be determined solely at the discretion of AdLab. For project based work where payment is made at the completion of a Task, Milestone, or FNL, if AdLab has performed any services towards a Task, Milestone, or FNL, Termination Charges may include the full price as if said Task, Milestone, or FNL were completed (“Project Charges”). Alternatively, and/or in conjunction with Project Charges, AdLab may also charge its applicable hourly rate for services performed. For example and not by way of limitation, if AdLab has worked X hours toward a project, Client must pay for X hours multiplied by the proper rate (design/engineering) less the sum of all Project Payments made by Client toward the Project (excluding License Fee Payments). Client expressly authorizes AdLab to charge Client’s credit card on file upon termination for all Termination Charges.

**Return of Data:** If these Terms and Conditions are terminated for any reason except Client’s breach and/or all AdLab services are completed, and if all Termination Charges and other charges, costs, expenses, and fees have been paid in full to AdLab, then any code or material that is not considered by AdLab as AdLab Software, data, or material and that was provided to AdLab by Client, may be transferred to the Client, upon Client’s request.

**Right of Termination:** AdLab may terminate, remove, and/or modify Software, license(s), project(s), service(s), or provision thereof, for any reason, including but not limited to: (a) breach or violation of the Terms and Conditions, related documents or other agreements; (b) requests by law enforcement, other government agencies, or third parties (e.g., brands); (c) nonpayment of fees, (d) disagreement of parties hereto. In the event of such termination, AdLab will not be liable to Client for any damages, fees, or any other remuneration.

**Opportunity to Cure:** If Client believes AdLab has breached these Terms and Conditions, Client must give AdLab written notice of the breach and ten (10) business days from receipt of such notice to cure prior to commencing suit, arbitration, action or claim.

## **11. BUGS AND ISSUES IN THE SYSTEM**

Client is required to report any bugs, issues, and problems to AdLab via AdLab’s email within three (3) calendar days of Client detecting such issues. AdLab, at its sole discretion, may decide whether the reported issue is within the scope of the project, whether there is a charge to fix it, and whether the Client must submit a written request for Change Order.

## **12. PROPRIETARY RIGHTS; COPYRIGHTS; CONFIDENTIALITY**

Client acknowledges and agrees that all Software, source codes, brochures, creations, pricing information, technical information, supply sources, customer lists, and other documents and items, developed and/or provided by AdLab (“Confidential Material”) contain proprietary and confidential information are trade secrets, are legally and entirely owned, controlled, and/or licensed by AdLab, irrespective of whether AdLab has or has not filed for copyright or patent protection for such items, and are protected by these Terms and Conditions and applicable intellectual property and other laws. Client agrees that Client will not, at any time (to the greatest extent permitted by law), copy, remove, use, view,

or disclose any Confidential Material or the terms of these Terms and Conditions to any third party, except as expressly authorized by AdLab.

### 13. NON-SOLICITATION

Client acknowledges that AdLab has invested significant time and money in recruiting and training its employees and that AdLab would incur additional time and money in recruiting, hiring and training a replacement in the event that Client solicits and hires a AdLab employee. Therefore, Client and AdLab agree that should Client, at any time before the date that is one year after all AdLab services for Client have been completed, AdLab products delivered, and other AdLab contractual obligations to Client performed, directly solicit for employment any employee of AdLab (and where the employee accepts employment with Client) or otherwise disrupt, damage, impair, or interfere with AdLab's business by raiding AdLab's employees, the parties agree that Client shall pay as liquidated damages to AdLab an amount equal to one (1) year of the employee's compensation with AdLab. The parties agree that AdLab's damages would be difficult to calculate but the amount identified herein as liquidated damages is a reasonable estimation of such damages and does not constitute a penalty.

### 14. LIMITED WARRANTY

AdLab provides Client the following limited warranties:

- a. For the portion of Software developed by AdLab which incorporates a third party code is used, AdLab has the right to license the use of such code to Client and that such Software does not infringe any third party rights; and
- b. That the Software developed by AdLab will perform as described in the PFSA.

This constitutes the **entire warranty**. Nothing herein should be construed to be a guarantee by AdLab that third party service providers used by AdLab will not infringe upon any third party rights. AdLab does not make **any other** warranty unless written and signed by both parties.

### 15. DISCLAIMERS

#### a. Disclaimers Of Warranties

CLIENT EXPRESSLY UNDERSTANDS AND AGREES THAT:

- i. EXCEPT AS OTHERWISE SET FORTH HEREIN, ADLAB AND ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, OWNERS, AND LICENSORS MAKE NO WARRANTY THAT THE SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. ADLAB CANNOT GUARANTY OR WARRANTY THE RETURN OF ANY DATA IN THE EVENT OF A SYSTEM FAILURE, AND THEREFORE CLIENT MUST EXERCISE CAUTION IN PROVIDING DATA TO AdLab.
  - ii. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ADLAB OR THROUGH OR FROM THE SOFTWARE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.
- b. Disclaimer Relating To Facebook & Instagram Advertising Client acknowledges that Facebook & Instagram Advertising ("FB Ads") is an art and not a science and that AdLab cannot and does not guarantee any results relating to the FB Ads services it will provide to Client under these Terms and Conditions as detailed in the PFSA. Client further acknowledges and agrees that (1) AdLab has no control over policies of social media platforms; (2) Client's advertising material, landing pages, or funnels may be excluded from any social media platform or directory at any time at the sole

discretion of the social media platform(s); (3) due to the competitiveness of some keywords/phrases, targeted audiences, ongoing changes in social media relevancy algorithms and other competitive factors, AdLab does not guarantee or warrant any results, including with respect to improved engagement, impressions, likes, comments, shares, but will make reasonable efforts to increase awareness; (4) social media platforms may stop accepting Ad submissions for an indefinite time period; (5) social media platforms may drop or block advertisements for no apparent or predictable reason and often listings will “reappear” without any additional submission; (6) AdLab reserves the right, but has no obligation, to consult with Client regarding social media content and positioning; and (7) AdLab is not responsible for changes made to Client’s website, landing pages, social media profiles, pages, or other content by third parties that adversely affect social media results of Client’s advertising efforts.

- c. **Disclaimer Relating To Search Engine Optimization (“SEO”)** Client acknowledges that SEO is an art and not a science and that AdLab cannot and does not guarantee any results relating to the SEO services it will provide to Client under these Terms and Conditions as detailed in the PFSA. Client further acknowledges and agrees that (1) AdLab has no control over policies of search engines; (2) Client’s website may be excluded from any search engine or directory at any time at the sole discretion of the search engine or directory entity; (3) due to the competitiveness of some keywords/phrases, ongoing changes in search engine ranking algorithms and other competitive factors, AdLab does not guarantee or warrant any results, including with respect to improved positions or traffic levels for any particular keywords, phrases or search terms, but will make reasonable efforts to increase rankings; (4) search engines may stop accepting submissions for an indefinite time period; (5) search engines may drop listings for no apparent or predictable reason and often listings will “reappear” without any additional submission; (6) AdLab reserves the right, but has no obligation, to consult with Client regarding social media content and positioning; and (7) AdLab is not responsible for changes made to Client’s website by third parties that adversely affect search engine or directory rankings of Client’s website.
- d. **Disclaimer Relating To Search Engine Marketing Management (“SEMM”)** Client acknowledges that SEMM is also an art and not a science and that AdLab cannot and does not guarantee or warrant any results relating to the SEMM services it will provide to Client under these Terms and Conditions as detailed in the PFSA. Client also acknowledges that there are numerous sources where the budget it approves for SEMM purposes may be spent and that while AdLab will make recommendations on the budget and which sources it believes will work for Client, such recommendations are opinions only. Client acknowledges the trial and error nature of SEMM and agrees that both the budget and the sources used will have to be experimented with as results are reviewed by it and AdLab. AdLab provides SEMM services and charges the Client only for management fees. Client is charged and must pay SEMM fees directly to internet marketing companies (e.g., Google Adwords); AdLab does not process these charges.
- e. **Additional Disclaimers Of Warranties For SEO And SEMM** ADLAB DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, FOR NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR ANY PURPOSE. AdLab DISCLAIMS ALL GUARANTEES REGARDING POSITIONING OR THE LEVELS OR TIMING OF (I) COSTS PER CLICK, (II) CLICK THROUGH RATES, (III) DELIVERY OF ANY IMPRESSIONS ON ANY WEB SEARCH NETWORK SITES, (IV) CLICKS, (V) CONVERSIONS FOR ANY ADS, (VI) CALLS, OR (VII) COSTS PER CALL. AdLab WILL NOT BE LIABLE FOR ANY DAMAGES NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- f. **Disclaimer Relating Product Data Integration And Management** AdLab DOES NOT WARRANT OR REPRESENT THAT THE DATA IT INTEGRATES OR USES UNDER THESE TERMS AND CONDITIONS WILL CONTINUE TO BE AVAILABLE IN THE SOFTWARE, OR WILL CONTINUE

TO BE DEVELOPED, PRODUCED, LICENSED, OR DISTRIBUTED WITH OR AS PART OF THE SOFTWARE OR AT ALL, OR THAT IT WILL NOT BE MODIFIED, REPLACED, ADDED TO, REDUCED, OR DISCONTINUED. THESE TERMS AND CONDITIONS WILL REMAIN IN FULL FORCE AND EFFECT REGARDLESS OF THE STATUS, CONTENTS OR AVAILABILITY OF THE PRODUCT DATA. IN THE EVENT AdLab IS UNABLE, AS A RESULT OF ITS LICENSE OR OTHERWISE TO UTILIZE THE PRODUCT DATA BEING TERMINATED FOR ANY REASON, CLIENT SHALL, UPON RECEIPT OF WRITTEN NOTICE FROM AdLab, IMMEDIATELY DESTROY THE PRODUCT DATA AND ANY OTHER DATA CLIENT PREVIOUSLY OBTAINED FROM AdLab AND SHALL PROVIDE PROOF OF SUCH DESTRUCTION TO AdLab. AdLab ALSO DOES NOT WARRANT THE ACCURACY OF THE PRODUCT DATA IT OBTAINS FROM VARIOUS MANUFACTURERS NOR DOES AdLab WARRANT THE ACCURACY OF THE DATA IT MANIPULATES FROM THE DATA PROVIDED BY THE MANUFACTURERS OR THE DATA CLIENT IS REQUESTING AdLab TO MANAGE. CLIENT ACKNOWLEDGES THAT ERRORS CAN EXIST IN SUCH PRODUCT DATA, INCLUDING THOSE CONTAINING THE MANIPULATED DATA, AND THAT AdLab SHALL NOT BE RESPONSIBLE FOR ANY SUCH ERRORS OR DAMAGES RESULTING TO CLIENT OR ITS CUSTOMERS FROM SUCH ERRORS.

- g. **Hosting, Tools, And Utilities** ADLAB, AT ITS SOLE DISCRETION, MAY USE THIRD PARTIES FOR HOSTING, TOOLS, AND UTILITIES, INCLUDING HOSTING A CLIENT'S WEBSITE. ADLAB DOES NOT MAKE ANY WARRANTY OR ASSURANCES WITH REGARD TO THE ACCURACY, WEBSITE UP-TIME, FUNCTION, OR AVAILABILITY OF SERVICE, RESULTS, OR OUTPUT THAT DERIVES FROM THE USE OF ANY THIRD PARTY HOSTING, TOOLS, AND UTILITIES. ADLAB IS NOT RESPONSIBLE AND CANNOT IN ANY WAY BE HELD LIABLE FOR ANY DOWNTIME, ERRORS, DAMAGES, CLAIMS, LAWSUITS, ACTIONS, ARBITRATIONS, DISPUTES, OR FAILURES OF OR CAUSED BY ANY THIRD PARTY SERVICE IT USES. CLIENT AGREES TO RESPECT THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WHEN USING ANY HOSTING, TOOLS, OR UTILITIES THAT MAY BE MADE AVAILABLE IN CONNECTION WITH SERVICES PROVIDED BY ADLAB, SOFTWARE, OR ADLAB PRODUCTS. ADLAB IS NOT A HOSTING COMPANY AND IF HOSTING IS PROVIDED AS PART OF THE SERVICE TO THE CLIENT, THEN CLIENT IS BOUND TO THE TERMS AND CONDITIONS OF THE THIRD PARTY HOSTING COMPANY FOR USING SUCH SERVICE, WHICH CLIENT MUST OBTAIN A COPY OF FROM ADLAB OR ELSEWHERE AND REVIEW.
- h. **\*LIMITATION OF LIABILITY\*** CLIENT EXPRESSLY UNDERSTANDS AND AGREES THAT ADLAB AND ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, SHAREHOLDERS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO CLIENT FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, RESULTING FROM ANY CLAIMS, INCLUDING BUT NOT LIMITED TO: (i) THE USE OR THE INABILITY TO USE THE SOFTWARE AND THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF CLIENT'S TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SOFTWARE OR SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SOFTWARE OR SERVICE PROVIDED TO CLIENT UNDER THESE TERMS AND CONDITIONS. CLIENT WAIVES ANY RIGHTS, LEGAL OR OTHERWISE, TO THE EXTENT INCONSISTENT WITH THE TERMS OF THESE TERMS AND CONDITIONS AND PERMISSIBLE BY LAW.

NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, CLIENT AGREES THAT THE TOTAL AMOUNT RECOVERABLE FROM ADLAB FOR ANY REASON IN CONNECTION WITH, ARISING OUT OF, OR IN RELATION TO THESE TERMS AND CONDITIONS, INCLUDING BREACH OR VIOLATION HEREOF, SHALL BE LIMITED THE TOTAL AMOUNT ACTUALLY PAID BY CLIENT TO ADLAB FOR SERVICES RENDERED. CLIENT HEREBY EXPRESSLY AGREES TO WAIVE ANY AND ALL AMOUNTS IT MAY BE ENTITLED TO RECOVER AGAINST ADLAB THAT EXCEED THE AMOUNT PAID BY CLIENT TO ADLAB UNDER THESE TERMS AND CONDITIONS. FOR THE PURPOSES OF COMPUTING THE TOTAL RECOVERY CLIENT MAY BE ENTITLED TO, THE AMOUNT PAID BY CLIENT TO ADLAB PROVIDER SHALL NOT INCLUDE ANY AMOUNTS PAID BY CLIENT TO ADLAB UNDER OTHER AGREEMENTS BETWEEN THE PARTIES.

#### 16. MISCELLANEOUS:

- a. **CLIENT'S OWN INVESTIGATION:** AdLab makes no warranties, guarantees or representations other than those specifically contained herein. Client acknowledges and agrees that it has not relied on any representation, warranty or guaranty of AdLab in entering into these Terms and Conditions other than those specifically contained herein and is depending solely on its own investigation and analysis of the services to be provided under these Terms and Conditions.
- b. **NECESSARY ACTS:** All parties to any PFSA and these Terms and Conditions shall perform any and all acts as well as execute any and all documents that may be reasonably necessary to fully carry out the provisions and intent of these Terms and Conditions.
- c. **SUCCESSORS AND ASSIGNS:** Except as otherwise expressly provided herein, these Terms and Conditions shall be binding upon, and shall benefit, the parties and their respective heirs, executors, administrators, successors and assigns.
- d. **JOINT AND SEVERAL LIABILITY:** If Client consists of more than one person or entity, then the obligations and liabilities of each such person or entity to AdLab shall be joint and several among them.
- e. **GOVERNING LAW:** These Terms and Conditions, any PFSA, the services provided by AdLab, and the legal relations among the parties shall be interpreted, construed and governed by the laws of California, without giving effect to any conflicts of laws.
- f. **WAIVER:** No delay or omission in the exercise of any right or remedy of AdLab upon any default by Client shall impair such right or remedy or be construed as a waiver of such default. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of these Terms and Conditions will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy.
- g. **VENUE AND JURISDICTION:** The parties agree that any suit, action or proceeding arising out of or relating to any these Terms and Conditions, any PFSA, the services provided by AdLab, or the interpretation, performance or breach of any PFSA or these Terms and Conditions, may only be instituted in a United States District Court for California or a court of the State of California located in Los Angeles, and each party submits to the jurisdiction of those courts and waives any and all rights to jurisdiction or venue that it may have in those courts in any such suit, action or proceeding in any other appropriate forum.
- h. **CONTRACTUAL STATUTE OF LIMITATION:** Client agrees that, irrespective of any law or statute to the contrary, any claim or cause of action that Client may have against AdLab, that arises out of these Terms and Conditions or is related to the services provided by AdLab, must be filed within six (6) months after such claim or action arose and that the discovery rule shall not apply to extend the six months' time period agreed upon in these Terms and Conditions for Client

to assert its claims. Any claim not filed within the six (6) month period will be deemed lapsed and Client will be barred from asserting such claim.

- i. **ENTIRE AGREEMENT:** These Terms and Conditions and any related PFSA contains all of the terms and conditions agreed on by the parties on its subject matter. These Terms and Conditions supersede all prior negotiations, discussions, correspondence and agreements between the parties on its subject. These Terms and Conditions cannot be modified or changed except by written instrument signed by all parties hereto. The parties may have entered into a separate agreement relating to services or projects not contemplated by these Terms and Conditions and such other agreements shall neither be superseded nor affected by these Terms and Conditions unless otherwise stated herein.
- j. **SEVERABILITY; HEADINGS:** If any portion of these Terms and Conditions is held invalid or inoperative, the other portions of these Terms and Conditions shall be deemed valid and operative and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The headings herein are for reference only and are not intended to describe, interpret, define or limit the extent or intent of the Terms and Conditions or of any part hereof.
- k. **EXECUTION:** A PFSA or the Terms and Conditions may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- l. **NOTICES:** All notices and reports permitted or required to be delivered by a party shall be deemed delivered: (i) when delivered in person; (ii) one business day after transmission by facsimile or other electronic system; or (iii) three business days after deposit in the United States Mail by Registered or Certified Mail, return receipt requested, postage prepaid and addressed as follows: If to AdLab: AdLab Marketing LLC., 5158 Clareton Dr Suite 1044, Agoura Hills, California 91301. If to Client: Client shall provide the address in writing to AdLab, or by email or other means if no address is provided. Either party shall have the right to change the address for notice by delivering a notice to the other party in accordance with the provisions of this paragraph.
- m. **CLIENT'S REPRESENTATIVE'S AUTHORITY TO EXECUTE AGREEMENT:** Client hereby represents that, in the event it is a corporation, or a limited liability company, or any other entity, that its Directors, Officers, Managing Members and such other required persons have passed a resolution authorizing Client to accept and agree to any applicable PFSA and these Terms and Conditions and that the party(ies) executing the PFSA and thereby accepting these Terms and Conditions have the authority to do so on behalf of Client and that Client will not later assert any defenses that the party executing these Terms and Conditions on its behalf was not authorized to act on its behalf.
- n. **INDEPENDENT CONTRACTOR:** AdLab is an independent contractor. Nothing in these Terms and Conditions will be construed as creating any joint venture, partnership, employment, or agency relationship between AdLab and Client.
- o. **FORCE MAJEURE:** AdLab shall not be liable to Client for any default or delay in the performance of any of its obligations under these Terms and Conditions, including failure of the services provided to Client under these Terms and Conditions, resulting directly or indirectly from forces or events beyond AdLab's control, including, without limitation, fire, flood, accident, acts of God, labor disputes, acts of war or terrorism, interruptions of transportation or communications, supply shortages, failure by any third party to perform any commitment relating to the production or delivery of any equipment, materials or services, or power or telephone failure or inability to obtain access to any website included in the services included under these Terms and Conditions.

- p. **SURVIVAL:** Except as otherwise expressly provided in these Terms and Conditions, all representations, obligations of Client, warranties, and covenants contained in these Terms and Conditions, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of these Terms and Conditions, will survive the termination of these Terms and Conditions forever or until the maximum time allowed by either Federal, State, or local law, whichever is longer. Such surviving provisions include without limitation the termination provisions, payment obligations, disclaimers, non-solicitation, proprietary rights, confidentiality, all AdLab rights relating to Software and licensing, and AdLab rights relating to data integration and management.

For any additional information or questions or concerns, please contact AdLab at 1-800-733-4633.