



TERMS AND CONDITIONS

1. **TERM, TERMINATION AND SURVIVAL:**

- (a) **Term.** This Agreement will commence as of the Effective Date and will continue in full force and effect thereafter until all Orders have expired or have been terminated (the “**Term**”) unless sooner terminated by either Party as provided in [Section 1\(b\)](#). In the event the term of any Order extends beyond the Term of this Agreement or the Parties enter into additional Orders after expiration of the Term or termination of this Agreement and do not extend the Term of this Agreement or enter into a new Order or other agreement with respect thereto, the terms and provisions of this Agreement will apply to any such Order.
- (b) **Termination.** Either Party may terminate this Agreement, effective upon written notice to the other Party (the “**Defaulting Party**”), if the Defaulting Party materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within fifteen (15) business days after receipt of written notice of such breach or, in the event such breach reasonably requires longer than fifteen (15) business days to cure, the Defaulting Party shall be given a reasonable amount of time to cure provided that the Defaulting Party commences operations to cure during the initial fifteen (15) business day period.
- (c) **Third-Party Commitments.** If for any reason Client desires to suspend or terminate, in whole or in part, any previously authorized Order, CvE will use its reasonable efforts to suspend or terminate such Order and any previously contracted third-party services from any Media Vendor specified to be provided thereunder; provided however that (i) CvE shall be entitled to retain the full amount of commissions and other revenues to which CvE would have been entitled had such third party service been completed; and (ii) Client shall indemnify and hold harmless CvE from any and all Losses incurred by CvE as a result of the suspension or termination of any previously authorized third-party services from any Media Vendor. Such previously authorized third-party services from Media Vendors which cannot be so suspended or terminated by CvE shall be carried to completion, and Client shall remain liable to pay for such authorized third-party services as provided in such Order.
- (d) **Remedies.** Subject to any limitations specified in this Agreement, upon a breach of this Agreement by a Party, the non-breaching Party, in addition to any termination rights, shall be entitled to such rights and remedies as may be available at Law, in equity or otherwise and such rights and remedies are cumulative and not exclusive. The exercise by any Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at Law, in equity or otherwise.
- (e) **Survival.** The rights and obligations of the Parties set forth in this Section 1, Section 3 (Fees and Expenses), Section 6 (Limitation of Liability), Section 7 (Indemnity), Section 8 (Confidentiality), Section 9 (Intellectual Property Rights), and Section 12 (Miscellaneous), and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.
- (f) **Termination Obligations.** Upon expiration or termination of the Agreement for any reason,
 - (i) CvE shall (A) deliver to Client all Deliverables (whether complete or incomplete) under any Order for which Client has fully paid CvE, (B) return all of Client Materials in CvE’s possession or control, and (C) deliver a final invoice for its Services rendered prior to termination, which will be payable by Client in accordance with [Section 3](#).
 - (ii) Each Party shall (A) securely destroy all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other Party’s Confidential Information, (B) permanently erase all of the other Party’s Confidential Information from its computer systems (unless such backup copies cannot be reasonably deleted in which case those undeleted backups shall be subject to the confidentiality provision of this Agreement until they are deleted) and (C) upon request, confirm in writing to the other Party that it has complied with the requirements of this clause (ii).

- 2. **SERVICES TO BE PROVIDED BY CVE:** During the Term of this Agreement, CvE shall provide the Services and Deliverables set forth on any Order executed by the Parties during the Term of this Agreement. The initial accepted Order is attached hereto as [Exhibit A](#). Additional Orders shall be deemed issued and accepted only if signed by an authorized representative of CvE and Client. CvE will not be required to provide any Services or create any Deliverables except as specifically set forth in this Agreement and any such Order. Client shall promptly execute any statement or document reasonably requested by CvE to further evidence CvE’s authority to provide the Services on behalf of Client. This Agreement governs each Order, except that in the event of any conflict or inconsistency between the terms of this Agreement and an Order, the terms of this Order will control. If CvE commences any Services for the Client during the Term hereof in the absence of an Order, this Agreement will nevertheless apply unless the Parties agree otherwise in a writing signed by both Parties. Either Party may, at any time, request changes to an Order. To be effective, any requested change or adjustment must be agreed to in writing by both Parties through a mutually executed change order (“**Change Order**”). CvE will continue performing the Services in accordance with such Order until the Parties execute a Change Order. If the Parties are unable to agree to a mutually acceptable change or adjustment, the Parties will complete their obligations with respect to the Services as set forth in the Order and the proposed changes will have no effect.

- (a) **CvE’s Obligations.** CvE shall:

- (i) before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;



- (ii) comply with, and ensure that all CvE Personnel comply with, all reasonable rules, regulations and policies of Client that are communicated to CvE in writing, including security procedures concerning systems and data and remote access thereto;
 - (iii) unless otherwise set forth in the applicable Order, CvE may utilize one or more subcontractors to provide any Services to and create any Deliverables for Client (each a "**Subcontractor**"). Nothing contained in this Agreement shall create any contractual relationship between Client and any Subcontractor. CvE's use of any Subcontractor shall not relieve CvE of any of its obligations under this Agreement. CvE shall be responsible for any failure by any Subcontractor to perform in accordance with this Agreement or to comply with any duties or obligations imposed on CvE under this Agreement to the same extent as if such failure to perform or comply was committed by CvE; and
 - (iv) be responsible for all CvE Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.
- (b) **Client Obligations.** Client shall:
- (i) cooperate with CvE in all matters relating to the Services and Deliverables;
 - (ii) respond promptly to any CvE request to provide direction, information, approvals, authorizations or decisions that are necessary for CvE to perform the Services in accordance with the requirements of this Agreement;
 - (iii) obtain and maintain any accounts with media providers, advertising platforms, data vendors, reporting companies and other third parties designated by Client utilized in connection with the Services (each such entity, the "Client Vendors"), and provide CvE a CvE-specific log-in for access to accounts with Client Vendors if necessary;
 - (iv) provide such Client Materials or other information as set forth in each Order or as CvE may request, in order to carry out the Services and create the Deliverables, in a timely manner, and ensure that such Client Materials are complete and accurate in all material respects; and
 - (v) obtain and maintain all necessary licenses and consents and comply with all applicable Laws in relation to the Services, data privacy, and CvE's use of the Client Materials.

If CvE's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its Media Vendors, agents, subcontractors, consultants or employees, CvE shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any Losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.

3. **FEES AND EXPENSES:**

- (a) **Fees.** In consideration for the provision of Services and delivery of Deliverables by CvE set forth on any Order, Client shall pay the fees for such Services and Deliverable as set forth in the applicable Order. Payment to CvE of all such fees and the complete reimbursement of expenses pursuant to this Section 3 shall constitute payment in full for the provision of the Services and delivery of the Deliverables.
- (b) **Expenses and Travel.** Client shall reimburse CvE for all expenses (including media purchases and other third-party expenditures called for in any Order), reasonable travel expenses, and any other out-of-pocket expenses incurred by CvE or CvE Personnel in connection with the performance of the Services. CvE shall furnish to Client any receipts, invoice, and other reasonable supporting documentation, if requested by Client. Any specific Client approval requirements or travel and expense policies shall be specified in the applicable Order (if none are specified, CvE shall follow its own, internal travel policy).
- (c) **Invoices.** CvE shall issue invoices to Client in accordance with this Section 3 (which may be issued electronically), and Client shall pay all invoiced amounts for fees and expenses due to CvE within thirty (30) days after Client's receipt of such invoice unless otherwise specified in the applicable Order. All payments hereunder shall be in US dollars made by check, ACH, or wire transfer.
- (d) **Disputes over Invoices.** Client may withhold from payment any amount disputed by Client in good faith, pending resolution of the dispute, provided that Client: (1) timely pays all amounts not subject to dispute; (2) notifies CvE of the dispute within ten (10) days prior to the due date, specifying in such notice (A) the amount in dispute; and (B) the reason for the dispute set out in sufficient detail to facilitate investigation by CvE and resolution by the Parties; (3) works with CvE expeditiously and in good faith to resolve the dispute promptly; and (4) promptly pays any amount determined to be due upon resolution of the dispute. If Client fails to notify CvE of such fee dispute in accordance with this provision, Client will be deemed to have fully accepted such invoice and have waived its right to dispute the fees contained therein.
- (e) **Taxes.** Client shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client hereunder; provided, that, in no event shall Client pay or be responsible for any taxes imposed on, or with respect to, CvE's income, revenues, gross receipts, personnel, or real or personal property, or other assets.
- (f) **Late Payment.** Except for invoices that the Client has disputed in writing in good faith, all late payments shall bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under Law, from the date such payment was due until the date paid. Client shall also reimburse CvE for all reasonable costs incurred in collecting any late payments, including, without limitation, collection agency fees, reasonable attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at Law (which CvE does not waive by the exercise of any rights hereunder), CvE shall be entitled to suspend the provision of any Services or Deliverables if the Client fails to pay any amounts when due hereunder and such



failure continues for fifteen (15) days following written notice thereof, except for any amount disputed in good faith in accordance with Section 3(d).

- (g) **Media Purchases.** CvE will place and purchase any of Client's media purchases in respect of which CvE is to perform the Services under this Agreement and any Order on behalf of Client as an agent for a disclosed principal, and Client agrees to execute such documentation to evidence such relationship for the benefit of any Media Vendor if requested. CvE will use Media Vendors for which Client has a direct contractual relationship and pays the Media Vendor directly; however, if CvE is to purchase media services or deliverables from any Media Vendor for which Client does not have a prior direct contract relationship, CvE will use commercially reasonable efforts to purchase such media under the principle of sequential liability, where CvE will be held solely liable for payments to the Media Vendors solely to the extent CvE has been paid by Client for such purchases, and CvE agrees that once Client has made such payments to CvE, CvE will assume all liability for such payment to the Media Vendors. CvE will have the right to confirm with any Media Vendor that they expressly agree to payment on such terms and will use commercially reasonable efforts to ensure that there is no joint and several liability between Client and CvE for payments to Media Vendor. If Media Vendors are unwilling to confirm in writing that they agree to payment in accordance with sequential liability, the Parties will discuss how best to move forward with such Media Vendors. CvE shall endeavor to guard against any loss to Client as the result of the failure of any Media Vendor to properly execute their commitments, provided, however, that CvE shall not be responsible for or be subject to any liability to Client (and/or any third party) for the services or deliverables provided by any Media Vendor, including their acts and omissions and/or any delays caused thereby.
4. **USE OF CLIENT NAME:** CvE shall not publish any press release referring to Client without Client's prior approval (which may be by email) as to its contents which such consent shall not be unreasonably withheld, conditioned, or delayed. Upon execution of this Agreement by Client, Client shall promptly provide CvE with a file containing Client's preferred logo(s) for limited use on CvE's website. In addition, CvE may also use Client's name and logo on CvE's sales and marketing materials and case studies provided that no Client Confidential Information is intentionally disclosed. CvE shall not use the Client's logo or name for any additional uses without Client's prior written approval (which may be by email) which such approval shall not be unreasonably withheld, conditioned, or delayed.
5. **REPRESENTATIONS AND WARRANTIES:**
- (a) **Parties.** Each Party represents and warrants to the other Party that:
- (i) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the Laws of its jurisdiction of organization;
 - (ii) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;
 - (iii) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary entity action of the Party; and
 - (iv) when executed and delivered by such Party, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- (b) **CvE.** CvE represents and warrants to Client that:
- (i) it shall provide the Services and deliver the Deliverables using personnel of required skill, experience and qualifications in a timely, professional and workmanlike manner in accordance with generally recognized industry standards for similar services, and devote adequate resources to meet its obligations under this Agreement;
 - (ii) it is in material compliance with and shall perform the Services in material compliance with, all applicable Laws;
 - (iii) to the best of CvE's knowledge, it holds a license to use all materials used by CvE to carry out its duties hereunder;
 - (iv) to the extent Client is receiving any Deliverables under this Agreement, Client will receive good and valid title to any Deliverables, free and clear of all encumbrances and liens of any kind upon Client's completion of its obligations contained in this Agreement and the applicable Order including the payment of all fees and expenses in full to CvE;
 - (v) the Services and Deliverables will be in conformity in all material respects with any requirements and specifications stated in this Agreement and any applicable Order for a period of 30 days after delivery to Client.
 - (vi) CvE shall not be liable for any breach of the representations and warranties set forth in this Section 5(b) unless Client gives CvE written notice of the defective or deficient Services or Deliverables, reasonably described, within thirty (30) days of the time when Client discovers or ought to have discovered that the Services or Deliverables were defective or deficient. Subject to CvE receiving proper notice of any defective or deficient Services or Deliverables in accordance with this paragraph and verification of such defect or deficiency, CvE shall, at Client's option, either: (i) re-perform the Services and/or re-deliver the Deliverables; or (ii) refund the price of the affected Services or Deliverables at the pro rata contract rate. THE REMEDIES SET FORTH IN THIS PARAGRAPH SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND CVE'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTIES SET FORTH IN THIS SECTION 5(B). NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CLIENT FROM CVE OR ITS PERSONNEL, ANY MEDIA VENDOR, OR THROUGH OR FROM THE USE OF THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY LISTED HEREIN.
- (c) **Client.** Client represents and warrants to CvE that:
- (i) it is in material compliance with, and shall perform all of its obligations under this Agreement and use all Services and Deliverables in compliance with, all applicable Laws;
 - (ii) with respect to any Client Materials provided to CvE or used in conjunction with the Services, (A) Client has all necessary rights, permissions, and consents to use the Client Materials and to permit all uses of the Client Materials by CvE as part of providing the Services and the Deliverables to Client; (B) Client has complied with all applicable Laws in connection with the collection and use of the Client Materials; and (C) Client will notify CvE if and to the extent Client no longer has all necessary rights, permissions, or consents to use such Client Materials; and
 - (iii) with respect to any advertising content provided by Client to CvE for the performance of CvE's Services and delivery of any Deliverables, such advertising content will not: (A) infringe on any third party's copyright, patent, trademark, trade secret or any other Intellectual Property Rights; (B) violate any Law; (C) be defamatory or trade libelous; (D) be



pornographic or obscene; (E) be knowingly fraudulent, deceptive or misleading, or (F) contain malware, spyware, virus, Trojan horse, worm, backdoor, time bomb, drop dead device, ransomware or other similar harmful, disabling or deleterious programming devices or routines. CvE reserves the right within its reasonable discretion to reject or remove any advertising content that breaches the foregoing representation.

- (d) Notwithstanding the foregoing and/or anything otherwise herein to the contrary, Client represents and warrants that is the sole responsibility of Client to review all Deliverables to confirm (i) the accuracy and legality of all descriptions, demonstrations and depictions of, and references to, Client's and, if applicable, its competitors', products and services, and to ensure that any claims and representations in the Deliverables, whether direct or implied ("Marketing Claims"), are true, accurate and supportable by objective and reliable information and data in Client's possession and are not deceptive, and (ii) compliance with any Laws which apply to Client's industry and/or its products (or if applicable, services).
- (e) **EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT, (I) NEITHER CVE NOR ANY CVE PERSONNEL HAS MADE ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY ASPECT OF THE SERVICES OR DELIVERABLES TO BE PROVIDED TO CLIENT PURSUANT TO THIS AGREEMENT; (II) EACH PARTY HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (III) CVE PROVIDES THE SERVICES AND DELIVERABLES ON AN "AS IS" BASIS AND CVE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. CVE DOES NOT WARRANT, AND ASSUMES NO LIABILITY FOR, (A) THIRD PARTY MATERIALS, (B) CLIENT MATERIALS, NOR (C) ANY SERVICES AND/OR DELIVERABLES TO THE EXTENT ANY NON-CONFORMANCE OR DAMAGES ARE CAUSED BY: (X) CLIENT'S MISUSE OR MODIFICATION OF THE SERVICES OR DELIVERABLES AND/OR CLIENT'S FAILURE TO USE CORRECTIONS OR ENHANCEMENTS MADE AVAILABLE; OR (Y) CVE'S COMPLIANCE WITH ANY INFORMATION, DIRECTION, SPECIFICATION OR MATERIALS PROVIDED BY CLIENT, OR ANY THIRD PARTY ON CLIENT'S BEHALF. THE FOREGOING DISCLAIMERS AND LIMITATIONS ON WARRANTY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.**

6. LIMITATION OF LIABILITY:

- (a) **EXCEPT AS OTHERWISE PROVIDED IN SECTION 6(b)**, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 6(b), IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED EITHER THE AGGREGATE AMOUNTS PAID OR PAYABLE TO CVE (EXCLUDING THE AMOUNT REIMBURSED TO CVE FOR MEDIA PURCHASES, THIRD-PARTY EXPENSES INCURRED BY CVE FOR CLIENT, OR TRAVEL EXPENSES) UNDER THE AFFECTED ORDER IN THE SIX-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM; PROVIDED, HOWEVER, THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY AMOUNTS PAYABLE BY CLIENT TO CVE UNDER THIS AGREEMENT OR ANY ORDER.
- (b) **The exclusions and limitations in Section 6(a) shall not apply to:** (1) a Party's indemnification obligations under Section 7 (Indemnification); (2) damages or other liabilities arising out of or relating to a Party's failure to comply with its obligations under Section 8 (Confidentiality); (3) damages or liabilities arising from Client's breach of Section 5(c)(ii) (Client Materials); (4) damages or other liabilities arising out of or relating to a Party's failure to comply with its obligations under Section 10 (Intellectual Property Rights; Ownership); (5) damages or other liabilities arising out of or relating to a Party's gross negligence or willful misconduct; and (6) Client's obligations to pay fees or expenses provided for under this Agreement to CvE.
- (c) BOTH PARTIES ACKNOWLEDGE THAT THE FEES PAID TO CVE UNDER THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY.

7. INDEMNITY:

- (a) **General Indemnification by CvE.** Subject to the last sentence of this Section 7(a), CvE shall indemnify, hold harmless, and defend Client and its officers, directors, equity holders, employees, agents, Affiliates, successors, and permitted assigns (each a "**Client Indemnified Party**") from and against all Losses that are incurred by a Client Indemnified Party, arising out of or resulting from any third-party claim, suit, action or proceeding (an "**Action**") that arises out of or results from: (i) any bodily injury, death of any Person or damage to real or tangible, personal property resulting from the grossly negligent, willful, or intentionally fraudulent acts or omissions of CvE or CvE Personnel; (ii) CvE's or CvE Personnel's material breach of any representation, warranty or obligation of CvE set forth in this Agreement or any applicable Order, or (iii) any failure by CvE or CvE Personnel to materially comply with any applicable Law in the performance of its obligations under this Agreement or any Order. Notwithstanding anything to the contrary in this Agreement, CvE is not obligated to indemnify, hold harmless or defend any Client Indemnified Party against Losses or Actions under this subsection (a) if such Losses or Actions arise out of or result from: (A) a Client Indemnified Party's negligence or more culpable act or omission (including recklessness or willful misconduct); (B) Client's express instructions to CvE; or (C) the failure of a Client Indemnified Party to materially comply with any of its obligations set forth in this Agreement or any Order.
- (b) **Intellectual Property Indemnification by CvE.** CvE shall indemnify, hold harmless, and defend a Client Indemnified Party from and against all Losses based on a claim that any of the Services or Deliverables or Client's receipt or use thereof infringes any Intellectual Property Right of a third party arising under the Laws of the United States; *provided, however*, that CvE shall have no obligations under this Section 7(b) with respect to claims to the extent arising out of: (i) any Client Materials or any instruction, information, designs, specifications, or other materials provided by Client to CvE; (ii) use of any Deliverables in combination with any materials or equipment not supplied to Client or specified by CvE, if the infringement would have been avoided by the use of the Deliverables not so combined; or (iii) any modifications or changes made to the Deliverables by or



on behalf of any Person other than CvE or CvE Personnel. If an indemnification claim under this subsection (b) is made or appears possible, Client agrees to permit CvE, at CvE's sole discretion, to (A) modify or replace the Deliverables or Services, or component or part thereof, with a non-infringing version of comparable functionality, or (B) obtain the right for Client to continue use of the Deliverables or Services. If CvE determines that neither alternative is reasonably available, CvE may terminate this Agreement or the applicable Order with respect to the affected component or part, effective immediately on written notice to Client provided that CvE shall refund or credit to Client all amounts Client paid in advance with respect to the Deliverables or Services that Client cannot reasonably use as intended under this Agreement.

- (c) **General Indemnification by Client.** Subject to the last sentence of this Section 7(c), Client shall indemnify, hold harmless, and defend CvE and its officers, managers, equity holders, employees, agents, Affiliates, successors, and permitted assigns (each a "**CvE Indemnified Party**") against all Losses that are incurred by a CvE Indemnified Party, arising out of any third-party Action that arises out of or results from: (i) any bodily injury, death of any Person or damage to real or tangible, personal property resulting from the negligent, willful or fraudulent acts or omissions of Client or its employees, contractors or agents; (ii) Client's or Client's employees', contractors' or agents' material breach of any representation, warranty or obligation of Client set forth in this Agreement or any applicable Order; (iii) any failure by Client or its employees, contractors or agents to materially comply with any applicable Law in the performance of its obligations under this Agreement or any Order; (iv) any Client Materials or any instruction, information, designs, specifications, or other materials provided by Client to CvE; and (v) any Marketing Claims. Notwithstanding anything to the contrary in this Agreement, Client is not obligated to indemnify, hold harmless or defend any CvE Indemnified Party against any Losses or Actions under this subsection (c) if such Losses or Actions arise out of or result from: (A) a CvE Indemnified Party's grossly negligent or more culpable act or omission (including willful misconduct); or (B) the failure of a CvE Indemnified Party to materially comply with any of its obligations set forth in this Agreement or any Order.
- (d) **Indemnification Procedures.** The Party seeking indemnification hereunder shall: (i) promptly notify the indemnifying party in writing of any third-party Action (provided that failure to promptly notify will not relieve the indemnifying Party of its indemnification obligations, except to the extent it has been materially prejudiced by such failure); (ii) reasonably cooperate with the indemnifying Party in the defense of the matter; and (iii) give the indemnifying Party primary control of the defense of the matter and negotiations for its settlement. The indemnified Party may, at its own expense, join in the defense with counsel of its choice. If the indemnifying Party does not participate in the defense of a claim covered by this Section 7, the indemnified Party will have the right to defend the Action in such manner as the indemnified Party deems appropriate, at the indemnifying Party's cost and expense. The indemnifying Party may not enter into a settlement or compromise any claim unless it (i) involves only the payment of monetary damages by the indemnifying Party, and (ii) includes a complete release of liability in favor of the indemnified Party; any other settlement or compromise of any claim will be subject to the written consent of the indemnified Party (not to be unreasonably withheld).

8. **CONFIDENTIALITY:**

- (a) The Receiving Party agrees: (i) to protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not to disclose, permit access to or otherwise make available Confidential Information of the Disclosing Party to any third party other than as is strictly necessary to carry out the Services without the prior written consent of the Disclosing Party; *provided, however*, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 8; (iii) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under this Agreement, any Order or, in the case of Client, to make use of the Services and Deliverables; and (iv) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party. Client acknowledges that the terms and conditions of this Agreement and any Order are confidential and highly proprietary to CvE and agrees not to disclose such terms and conditions to any third party under any circumstances, except as required by Law or permitted by CvE.
- (b) If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide: (1) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and (2) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request and at the Disclosing Party's cost, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.
- (c) Nothing in this Agreement shall prevent either Party from using any general methodologies or know-how contained in the unaided memory of such Party's personnel or those of its Affiliates developed or disclosed under this Agreement, provided that in doing so it is not in breach of its obligations of confidentiality under this Section 8 or using any Intellectual Property Rights of the other Party or any of its Affiliates.

9. **INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP:**

- (a) Except as set forth in Section 9(c), upon full payment of all fees and expenses to CvE, Client is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Deliverables, including all Intellectual Property Rights therein. CvE agrees, and will cause its CvE Personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for Client. To the extent that any of the Deliverables do not constitute a "work made for hire", CvE hereby irrevocably assigns, and shall cause the CvE Personnel to irrevocably assign to Client, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. CvE shall cause the CvE Personnel to irrevocably waive, to the extent permitted by applicable Law, any and all claims such CvE Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of *droit moral* with respect to the Deliverables.



- (b) Upon the reasonable request of Client, CvE shall, and shall cause the CvE Personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Client to prosecute, register, perfect, or record its rights in or to any Deliverables.
- (c) CvE and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to the CvE Pre-Existing Materials, including all Intellectual Property Rights therein. Under no circumstances does CvE convey, in whole or in part, any Intellectual Property Rights it has or may have in the CvE Pre-Existing Materials except as expressly provided herein. CvE reserves the right to use CvE Pre-Existing Materials on other engagements with other clients so long as the use does not include or incorporate Client's Confidential Information or Client's exclusive Intellectual Property Rights. CvE hereby grants Client (or with respect to any third party Intellectual Property Rights it licenses, represents and warrants that it has secured on behalf of Client) a limited, irrevocable, perpetual, fully paid-up, royalty-free, non-transferable (except in accordance with [Section 12\(b\)](#)), non-sublicensable, non-exclusive, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell, and otherwise exploit any CvE Pre-Existing Materials solely to the extent incorporated in, combined with, or otherwise necessary for the use of the Deliverables solely to the extent reasonably required in connection with Client's receipt or use of the Deliverables. All other rights in and to the CvE Pre-Existing Materials are expressly reserved by CvE. Notwithstanding the foregoing, if CvE provides Client with access to any software, platforms, or dashboards, including for reporting on Client's ad campaigns, Client's shall only receive a limited license to such software, platform, or dashboard to view or access the contents thereof only during the Term of the applicable Order.
- (d) Client and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Client Materials, including all Intellectual Property Rights therein. CvE shall have no right or license to use any Client Materials except solely during the Term of the Agreement to the extent necessary to provide the Services and the Deliverables to Client. All other rights in and to the Client Materials are expressly reserved by Client.
- (e) If Client or any of its employees or contractors provide CvE with any ideas, suggestion(s), enhancement requests, feedback and/or recommendation(s) regarding CvE's Services or reporting platforms, including without limitation, new and/or improved features or functionality relating thereto ("**Feedback**"), CvE is free to use and disclose such Feedback without any obligation to Client or such employees or contractors and to incorporate into any existing or future products or features.
10. **FORCE MAJEURE.** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Client to make payments to CvE for any Services rendered) when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; compliance with any Law, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; shortage of adequate power or telecommunications or transportation facilities; telecommunications line failures, electrical outages, network congestion, internet or network failures, software or hardware malfunctions, ISP malfunctions, supplier failure, third-party platform failure; or any other event which is beyond the reasonable control of such Party (each of the foregoing, a "**Force Majeure Event**"). A Party whose performance is affected by a Force Majeure Event shall give notice to the other Party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event. Provided, however, this section shall not relieve Client of its payment obligations to CvE, including, but not limited to, the payment of any fees due CvE or the reimbursement of expenses (i.e. media purchases, travel expenses, third-party commitments, influencer campaigns, etc.) incurred by CvE on behalf of Client during, after, or prior to such Force Majeure Event.
11. **DEFINED TERMS:** Capitalized terms used in this Agreement have the meaning specified in this [Section 11](#) or as elsewhere defined in this Agreement.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "**control**" (including the terms "**controlled by**" and "**under common control with**") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Client Materials**" means any images, graphics, text, creative elements, documents, data, links, designs, know-how, methodologies, software, code, computer programs, reports, specifications, advertising content and other materials supplied by Client (or any person on its behalf, including any Client Vendor) to CvE or a Media Vendor which is included in, or used to deliver, any of Client's ads, together with any content or materials on any interactive website or app linked to any of Client's advertising materials.

"**Confidential Information**" means any information whether written or oral that is treated as confidential by a Party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, financial information, and information pertaining to customers, vendors, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who to the knowledge of the Receiving Party is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

"**CvE Personnel**" means all employees and Subcontractors, if any, engaged by CvE to perform the Services.

"**CvE Pre-Existing Materials**" means all documents, data, tools, dashboards, know-how, methodologies, processes, strategies, software, code libraries, platform accounts, documentation and other materials, including computer programs, creative design templates and concepts, reports and specifications, provided by or used by CvE in connection with performing the Services or creating any Deliverables, in each case conceived, developed or acquired by CvE prior to the commencement or independently of this Agreement.



“**Deliverables**” means all documents, work product and other materials identified as such on an Order that are delivered to Client during the Term or prepared by or on behalf of CvE in the course of performing the Services and activated or deployed directly through CvE. For clarity, in the context of creative assets, the term “Deliverables” shall mean only the final production creative asset produced by CvE.

“**Disclosing Party**” means a Party that discloses Confidential Information under this Agreement.

“**Intellectual Property Rights**” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other Confidential Information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Media Vendor**” means any entity Client has an existing relationship with or otherwise directs CvE to engage that is required for the delivery, purchase, or placement of the media placements and the provision of the services hereunder, including, without limitation, publishers, media companies, websites, technology platforms (e.g., demand-side platforms, supply-side platforms, trading desks, ad exchanges, re-targeting companies, advertising networks, etc.), social networks, market research companies, and technical service providers (e.g., providers of ad serving/delivery, ad tracking, brand safety, anti-fraud, etc.). Notwithstanding anything to the contrary in the Agreement, Media Vendors shall not constitute a “Subcontractor”, “agent”, or “Personnel” of CvE hereunder.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Receiving Party**” means a Party that receives or acquires Confidential Information directly or indirectly under this Agreement.

“**Services**” mean any services to be provided by CvE under this Agreement, as described in more detail in an Order, and CvE’s obligations under this Agreement.

“**Order**” or “**Order**” means each Order entered into by the Parties and attached to this Agreement including the initial Order being attached hereto as Exhibit A.

12. MISCELLANEOUS

- (a) **Independent Contractor Relationship**. Nothing herein shall be construed to create a joint venture, partnership or other form of joint enterprise between the Parties hereto or an employee/employer relationship. Unless otherwise specified in this Agreement or any Order, CvE shall be an independent contractor pursuant to this Agreement, and neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.
- (b) **Non-Solicitation Covenant**: During the term of this Agreement and for a period of one year following the delivery of any Services by Company to Client, each party agrees they shall not attempt to (1) recruit (2) solicit for hire any employee of the other party. This provision does not prohibit either party, directly or with the assistance of a recruiting firm, from hiring any individual who responds to an employment advertisement or announcement that is not directed specifically at employees of the other party. If client decides to hire a CvE Consultant, Independent Contractor or any employee as a direct employee, CvE should receive 30days notice or related compensation as well as 30% of annualized salary or flat fee of \$30,000USD, which ever is greater.
- (c) **Assignment**. Neither Party may assign this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, that, upon prior written notice to the other Party, either Party may assign the Agreement to an Affiliate of such Party or to a successor of all or substantially all of the assets of such Party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning Party of any of its obligations hereunder. Any attempted assignment in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- (d) **Governing Law: Choice of Forum**. This Agreement, including all Orders, exhibits, schedules, attachments and appendices attached hereto, and all matters arising out of or relating to this Agreement, shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in New York County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or the Services hereunder. Each Party agrees that a final judgment in any such Action is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.



- (e) **Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING ORDERS, EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY ORDERS, EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- (f) **Attorney Fees.** If any action, suit or other legal or administrative proceeding is initiated or commenced by either Party against the other Party arising out of or related to this Agreement including all Orders, exhibits, schedules, attachments and appendices attached hereto, the prevailing Party will be entitled to recover its reasonable attorneys' fees and court costs incurred in connection therewith from the non-prevailing Party.
- (g) **Entire Agreement.** This Agreement, including and together with any and all Orders, exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous, understandings, agreements, representations and warranties, whether oral or written, regarding such subject matter. This Agreement shall control as to all items addressed herein which are not superseded by an inconsistent provision in an Order. All Orders shall be read in conjunction with, and the Parties agree and understand that each Order shall incorporate, this Agreement whether or not it so states in the Order. Client acknowledges that it is entering into this Agreement based solely upon its own evaluation of the solutions to be provided by CvE and has not relied on any statement or other representation not contained herein. Under no circumstances will the terms, conditions or provisions of any purchase order, insertion order, invoice or other administrative document issued by Client in connection to this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the Parties under, or otherwise modify, this Agreement, regardless of any failure of CvE to object to such terms, provisions or conditions.
- (h) **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and shall be deemed to have been given (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail (in each case, return receipt requested, postage pre-paid). Notices must be sent to the respective Party at the address for such Party set forth on the signature page hereto with additional copies, which shall not constitute notice, to be sent to any legal notice email address listed in the signature block (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section 13(g)). A copy of all legal notices to CvE shall be emailed to legal@goodwaygroup.com.
- (i) **Amendment.** No change, amendment or modification of any provision of this Agreement shall be valid or effective unless set forth in a written instrument signed by a duly authorized representative of each Party.
- (j) **Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- (k) **Waiver.** No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (l) **No Third-Party Beneficiaries.** Except as provided in Section 7, this Agreement benefits solely the Parties to this Agreement and their respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (m) **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- (n) **Further Actions.** Each Party shall, upon the reasonable request, and at the sole cost and expense, of the other Party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.
- (o) **Interpretation.** For purposes of this Agreement, (i) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (A) to Sections, Schedules, Exhibits and Orders refer to the Sections of, and Schedules, Exhibits and Orders attached to this Agreement; (B) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (C) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits, and Orders referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.
- (p) **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.



- (q) **Equitable Remedies.** Each Party acknowledges that a breach by a Party of Section 8 (Confidentiality) or Section 10 (Intellectual Property Rights; Ownership) may cause the non-breaching Party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching Party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

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