

TERMS OF SERVICE

These TERMS OF SERVICE (the “**Terms**”) are effective as of the effective date of the Accepted Proposal incorporating these Terms (the “**Effective Date**”), by and between 2H Media Group LLC (“**2H**”) and the client identified in the Accepted Proposal (the “**Client**”) and apply to all Services described in the Accepted Proposal.

1. Definitions. As used in the Agreement, the following terms shall have the following meanings.

(a) “**2H Materials**” means (i) all documents, data, know-how, methodologies, software, work product and other materials provided by or used by 2H in connection with the Services that were developed or acquired by 2H prior to the commencement of or independent of the Agreement, and any derivative works based thereon, and (ii) software code created by 2H or any of its contractors.

(b) “**Accepted Proposal**” means any document describing, as applicable, the Services that 2H is to perform for Client, the Deliverables that 2H is to create for Client, and certain other materials to be licensed to Client, and that expressly references these Terms and is signed by an authorized representative of each party, as such document may be amended by the parties from time-to-time pursuant to Section 2(d) below.

(c) “**Agreement**” means, collectively, these Terms, the Accepted Proposal(s), and all exhibits thereto.

(d) “**Deliverables**” means all final documents, work product and other materials authored or created by 2H and provided by 2H to Client pursuant to the Agreement (as more fully described in Section 6 below and any Accepted Proposal(s)), but excluding any and all 2H Materials and Third Party Software, and any derivative works thereof. Notwithstanding anything to the contrary in the Agreement, the Deliverables include only the final documents, work product and other materials as provided to Client, and not any “working files”, “source files” or “editable files” created by 2H.

(e) “**Fees**” means the fees, described in the Accepted Proposal(s), that are payable to 2H.

(f) “**Intellectual Property Rights**” means all patent, copyright, trademark and other intellectual property rights.

(g) “**Services**” means all services that are (i) described in the Accepted Proposal(s), or (ii) otherwise mutually agreed upon by both parties. The “Services” may include creative services (e.g., production of creative assets, including graphic design, photography, videography, copywriting, user interface/user experience), marketing services (e.g., strategic planning and consulting on business growth for Client, including advertising budgets, publication of content and implementation of branding efforts), and web-development (e.g., building, maintaining and hosting of websites, web applications, and software applications, which may include the use of Third Party Software).

(h) “**Third Party Fees**” means the fees described in the Accepted Proposal(s) for Third Party Software.

2. Services.

(a) General. 2H shall provide the Services to Client in a professional manner. Notwithstanding anything to the contrary in the Agreement, 2H is not obligated to provide Services to Client until it has received the Deposit for such Services, as applicable.

(b) Subcontractors. 2H may, in its discretion, engage subcontractors to provide the Services.

(c) Third Party Software. Client acknowledges and agrees that (i) 2H may use certain software, software platforms and online services provided by third parties (collectively, the “**Third Party Software**”) in connection with the provision of the Services and creation of the Deliverables; (ii) 2H is not responsible for the operation or availability of the Third Party Software; (iii) all use of the Third Party Software is subject to the terms of the third party that provides such Third Party Software. Client hereby authorizes 2H to enter into agreements on behalf of Client, and in Client’s name, with the providers of the Third Party Software, and agrees and acknowledges that 2H has legal authority to bind Client to such agreements.

(d) Scope of Services. In the event that the parties agree to change the scope of the Services to be provided pursuant to an Accepted Proposal, the parties shall complete a “change order” detailing the changes to the Services to be provided. Any such “change order” that is executed by both parties shall be considered part of the applicable Accepted Proposal that it amends.

3. Client’s Responsibilities. To assist 2H in providing the Services and Deliverables, Client shall do the following:

(a) Designate a contact person who has the authority to act on behalf of Client with respect to matters pertaining to the Agreement,

(b) Supply all materials reasonably required by 2H to perform the Services and create the Deliverables, in the form and format reasonably requested by 2H,

(c) Respond promptly to 2H requests that Client provide information, instructions and approvals that are reasonably necessary for 2H to perform the Services and create the Deliverables, and ensure that appropriate personnel are available to do so, and

(d) Obtain (and maintain as necessary) all licenses and consents necessary for 2H to perform the Services and create the Deliverables (including all licenses necessary for 2H to access and use any Client Materials as contemplated in the Agreement).

2H shall not be in breach of its obligations under the Agreement (including, without limitation, any delay in providing Services) or otherwise liable for any costs, charges, or losses sustained or incurred by Client to the extent they result from Client’s failure to perform any of Client’s obligations (whether set forth in this Section 3 or elsewhere in the Agreement).

4. Fees.

(a) Fees. Fees for the Services and Deliverables and Third Party Fees are set forth in the applicable Accepted Proposal. Client shall pay the Fees and Third Party Fees within fifteen (15) days of the applicable invoice date.

(b) Expenses. Client agrees to reimburse 2H for all out-of-pocket expenses incurred by 2H in the performance of the Services or creation of the Deliverables, including any travel related expenses, provided that such expenses are pre-approved by Client.

(c) Payments.

(i) Project Fees. Any Fees identified in an Accepted Proposal as "Project" Fees are invoiced as follows:

(1) 2H shall invoice Client for fifty percent (50%) of the applicable "Project" Fees after execution of an Accepted Proposal (the "**Deposit**").

(2) 2H shall invoice Client for the remaining fifty percent (50%) of the "Project" Fees upon completion of the Services by 2H and delivery of the Deliverables to Client for the applicable Accepted Proposal.

(ii) Monthly & Hourly Fees. Unless the parties agree otherwise in writing, 2H will invoice Client on a monthly basis for

(1) all fees identified as "Monthly" Fees and applicable to the prior calendar month, and

(2) all additional Fees incurred in the prior month for Services and Deliverables that are not covered by the "Project" Fees or the "Monthly" Fees, which Fees will be calculated based on the hourly rate specified in the applicable Accepted Proposal(s) (or, if no such rate is specified, at 2H's then-current hourly rate for the relevant Services).

(iii) Third Party Fees. Client shall timely pay all Third Party Fees in accordance with the terms applicable to the Third Party Software.

(d) Late Payments. In the event 2H does not receive any payment within thirty (30) days after the applicable due date, 2H may (i) charge interest on any such unpaid amounts at a rate of one percent (1%) per month or, if lower, the maximum amount permitted under applicable laws, from the date such payment was due until the date paid, and (ii) suspend performance for all Services until payment of such unpaid amount has been made in full.

5. Taxes. Unless otherwise agreed by the parties in writing, any amounts to be paid to 2H are exclusive of any taxes and other charges of any kind imposed by any governmental entity (collectively, "**Taxes**"). Client shall pay directly to the applicable taxing authority or be responsible for reimbursing 2H for any Taxes whether imposed on Client or 2H in connection with the transactions and services contemplated by the Agreement or provide 2H with a valid tax exemption certificate authorized by the applicable taxing authority.

6. Ownership of Intellectual Property.

(a) Deliverables.

(i) Client shall own all Intellectual Property Rights in any and all Deliverables as of the date that 2H provides such Deliverables to Client.

(ii) 2H agrees that the Deliverables have been specially ordered or commissioned by Client, the Deliverables are “work made for hire” for Client as defined in Section 101 of the Copyright Act of 1976, 17 U.S.C. Section 101, and Client is and shall be considered the sole and exclusive author of the Deliverables. To the extent the Deliverables do not qualify as work made for hire, 2H hereby: (1) assigns, transfers, and otherwise conveys to Client all of its right, title, and interest in and to such Deliverables, including all of its Intellectual Property Rights therein, which include without limitation all registration, renewal, and reversion rights, and the right to register and sue to enforce such Intellectual Property Rights against third parties; and (2) waives any and all claims to so-called “moral rights” with respect to such Deliverables.

(iii) On Client’s reasonable request, 2H shall execute and deliver any documents necessary to further evidence or effectuate Client’s rights under the Agreement.

(iv) For the avoidance of doubt, the term Deliverables as used in the Agreement does not include any 2H Materials or Third Party Software or any derivative works thereof, so the terms of this Section 6(a) do not grant Client any rights, title or interest in the 2H Materials or Third Party Software or any derivative works thereof (and any such rights therein are addressed in Section 6(b) below and applicable third party terms).

(b) 2H Materials.

(i) Notwithstanding anything in the Agreement to the contrary, 2H and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to any 2H Materials, including all Intellectual Property Rights in the 2H Materials and any derivative works based on the 2H Materials.

(ii) 2H hereby grants Client a non-exclusive, perpetual, royalty-free, worldwide license to display, copy, and otherwise use all 2H Materials in connection with Deliverables, all subject to any and all terms applicable to the 2H Materials.

(c) Client Materials.

(i) “**Client Materials**” means any materials provided by Client (including, without limitation, any software, data, text, photographs, logos and graphics) to 2H.

(ii) Client grants a license to 2H to access, use, reproduce, modify, create derivative works of and otherwise use Client Materials in connection with the Deliverables and Services.

(iii) Client represents and warrants that (1) Client owns all right, title and interest in and to, or has full and sufficient authority to use and to grant 2H the rights granted above in Section 6(c)(ii) for all Client Materials; (2) none of the Client Materials infringe the Intellectual Property Rights of any party, or constitutes libel, slander, defamation, invasion of privacy, or a violation of any right of publicity or any other third party rights; and (3) Client is in compliance with, and will remain in compliance with, all laws applicable to its provision of the Client Materials to 2H.

7. Term and Termination.

(a) Term.

(i) The term of the Agreement shall commence on the Effective Date and shall continue for a period of one (1) year, unless sooner terminated as provided herein (the “**Initial Term**”).

(ii) In the event that an Accepted Proposal includes ongoing services to be provided beyond the end of that one (1) year period (collectively, “**Ongoing Services**”), the term of the Agreement will automatically renew for successive periods of one (1) year each (each a “**Renewal Term**”) unless either party provides written notice of termination no later than sixty (60) days prior to expiration of the then-current Initial Term or Renewal Term.

(iii) In the event that there is not any Accepted Proposal that includes Ongoing Services, the Agreement shall terminate at the end of the Initial Term, unless 2H and Client agree in writing to renew the term of the Agreement, in which case the Agreement shall renew for the period of time agreed upon in writing by the parties (or, if no period of time is specified, for one (1) year).

(iv) The Initial Term together with any Renewal Term(s) may be referred to as the “**Term**”.

(b) Termination without Cause. Either party may terminate the Agreement or any Accepted Proposal without cause by giving sixty (60) days prior written notice.

(c) Termination for Breach. Either party may terminate the Agreement upon written notice to the other in the event of a breach of such Agreement, but only after the non-defaulting party furnishes written notice of such breach to the defaulting party and the defaulting party fails to cure such breach within thirty (30) days of receipt of the notice.

(d) Immediate Termination. The Agreement may be terminated by either party immediately if the other party: (i) becomes insolvent or unable to pay its debts as they mature within the meaning of the United States Bankruptcy Code or any successor statute; (ii) makes an assignment for the benefit of its creditors; (iii) files or has filed against it, voluntarily or involuntarily, a petition under the United States Bankruptcy Code or any successor statute unless such petition is stayed or discharged within ninety (90) days; or (iv) has a receiver appointed with respect to all or substantially all of its assets.

(e) Obligations Upon Termination. Upon termination of the Agreement or expiration of its Term, Client shall pay to 2H any and all unpaid Fees incurred in connection with Services performed and Deliverables created by 2H prior to such termination or expiration, and any post-termination Services performed by 2H at the request of Client to transition any Services or Deliverables to another entity. For the avoidance of doubt, this section shall survive expiration or earlier termination of the Agreement.

(f) Effect of Termination on Accepted Proposals. Upon termination or expiration of these Terms for any reason, all Accepted Proposals shall also terminate or expire, effective immediately. The termination of one Accepted Proposal shall have no effect on any other Accepted Proposal(s).

8. Confidentiality of Information.

(a) Defined. “**Confidential Information**” means, subject to Section 8(b) below, any and all nonpublic information, provided by one party (the “**disclosing party**”) to the other party (the “**receiving party**”), in any form or medium, tangible or intangible and whether communicated in writing, orally, or through visual observation, that the disclosing party designates as being confidential or which, under the circumstances surrounding disclosure or given the nature of the information, ought to be treated as confidential.

(b) Exclusions. The term “**Confidential Information**” does not include information, however designated, that (i) is or subsequently becomes generally known or available by readily ascertainable means through no fault of the receiving party, (ii) is known to the receiving party prior to disclosure of such information to the receiving party without any restriction on the receiving party’s further use or disclosure, (iii) is obtained by the receiving party on a non-confidential basis from a third party that, to the knowledge of the receiving party, was not legally or contractually restricted from disclosing such information, or (iv) was or is independently developed by the receiving party without using any Confidential Information.

(c) Confidentiality Obligations. A disclosing party shall not provide Confidential Information to the receiving party unless it has the right to disclose such Confidential Information to the receiving party. Each party agrees that, during and after the Term, it will (i) refrain from using the other party’s Confidential Information except as necessary to perform its obligations under the Agreement, and (ii) refrain from disclosing any Confidential Information without the other party’s prior written consent, except that 2H may disclose Confidential Information to the employees and contractors who reasonably require such Confidential Information in order to perform the Services and/or create the Deliverables.

(d) Return of Confidential Information. Each party agrees, promptly upon the expiration or termination of the Agreement or at any time upon the request of the other party, to deliver to the other party all originals, copies, reproductions and summaries of the Confidential Information, and all records, data, information, and other documents produced or acquired during the performance of the Agreement and all copies thereof. Such material shall remain the property of the disclosing party.

9. Indemnification.

(a) Obligation to Indemnify by 2H. 2H shall defend, indemnify and hold harmless Client and its officers, directors, employees, agents, successors and permitted assigns (each a “**Client Indemnified Party**”) from and against any and all costs, damages, losses, liabilities, penalties, fines, expenses, or other damages (including, but not limited to, settlements, defense costs, judgments, court costs, expert(s) fees, and reasonable attorneys’ fees) incurred in connection with claims, demands, suits, or proceedings (“**Claims**”) made or brought against such Client Indemnified Party by a third party alleging that the use of the Deliverables and 2H Materials infringes any Intellectual Property Right of such third party; provided that Client’s use of the Deliverables and 2H Materials, as applicable, is in accordance with the terms of the Agreement and provided that Client complies with the requirements of Section 9(c) below.

(b) Obligation to Indemnify by Client. Client shall defend, indemnify and hold harmless 2H and its officers, directors, employees, agents, successors and permitted assigns (each a “**2H Indemnified Party**”) from and against any and all costs, damages, losses, liabilities, penalties, fines, expenses, or other damages (including, but not limited to, settlements, defense costs,

judgments, court costs, expert(s) fees, and reasonable attorneys' fees) incurred in connection with Claims made or brought against such 2H Indemnified Party by a third party alleging that the use of the Client Materials infringes any Intellectual Property Right of such third party; provided that 2H's use of the Client Materials is in accordance with the terms of the Agreement and provided that 2H complies with the requirements of Section 9(c) below.

(c) As applicable, each Client Indemnified Party or 2H Indemnified Party (the "**Indemnified Party**") shall (a) promptly give written notice of the Claim to the party obligated to indemnify such Indemnified Party (the "**Indemnitor**") (failure to so notify the Indemnitor will not relieve the Indemnitor of any liability which the Indemnitor might have, except to the extent that such failure materially prejudices the Indemnitor's legal rights); (b) give the Indemnitor sole control of the defense and settlement of the Claim (provided that the Indemnitor may not settle any Claim without the Indemnified Party's prior written consent (which will not be unreasonably withheld, conditioned or delayed), unless such settlement unconditionally releases the Indemnified Party of all related liability and imposes no obligation on the Indemnified Party); and (c) provide to the Indemnitor all reasonable assistance in the defense of the relevant Claim. The Indemnified Party will be entitled to engage separate counsel at its sole expense to consult with the Indemnitor with respect to the defense of the Claim.

10. Notices. All notices required or permitted under the Agreement must be in writing and delivered to the addresses set forth in the applicable Accepted Proposal, or to such other address as either party specifies in writing. Notices will be deemed effective upon receipt and shall be sent (a) by certified or registered mail, postage prepaid, return receipt requested; (b) by overnight delivery by a major U.S. overnight document courier; or (c) via electronic mail.

11. Liability.

(a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9, IN NO EVENT WILL 2H BE LIABLE TO CLIENT 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 CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9, IN NO EVENT WILL 2H'S LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT OF FEES IT ACTUALLY RECEIVED UNDER THE AGREEMENT.

12. Governing Law; Venue; Jurisdiction. The Agreement and all matters arising out of, or relating to, the Agreement, are governed by the laws of Kentucky, including its statutes of limitations and choice of law statutes, without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction. Either party may institute any legal suit, action, or proceeding arising out of, or relating to, the Agreement in the state courts in Marshall County, Kentucky, or, if jurisdiction is available, in the federal courts in the Western District of Kentucky, and each party irrevocably submits to the exclusive jurisdiction of such courts in any legal suit, action, or proceeding.

13. Warranties and Representations.

(a) Mutual Warranties. Each party represents and warrants to the other that: (i) such party is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (ii) the consent of no other person or entity is necessary for it to enter into and fully perform the Agreement; and (iii) the person entering into the Agreement is authorized to sign the Agreement on behalf of the party.

(b) EXCEPT FOR THE EXPRESS WARRANTIES IN THESE TERMS (i) 2H HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND (ii) 2H SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT 2H KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), TITLE AND NON-INFRINGEMENT.

14. Miscellaneous Provisions.

(a) Independent Contractor. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner except as permitted in Section 2 above.

(b) Non-Solicitation. Client shall not, and shall not permit any of its affiliates to, directly or indirectly, at any time during the Term and for a period of one (1) year after its termination or expiration, (i) solicit (other than by way of general advertisement), (ii) hire or engage, (iii) attempt to hire or engage or (iv) knowingly induce or influence to discontinue or reduce the scope of their employment or business relationship, any employees, agents, independent contractors or other persons or entities employed or engaged or previously employed or engaged by 2H or any of its affiliates.

(c) Entire Agreement; Severability; Amendments. These Terms, any Accepted Proposals (including any exhibits attached thereto), and any written amendments to the Agreement signed by an authorized representative of each of 2H and Client, constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes any previous agreements or understandings, whether oral or written. If any portion or portions of the Agreement shall be deemed invalid or unenforceable for any reason, the remaining portion(s) shall be valid and enforceable and carried into effect unless to do so would clearly violate the present legal and valid intention of the parties hereto. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify the Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible. Except for updates to these Terms (which may become effective upon acceptance by Client (e.g., by Client clicking "I accept" or otherwise taking action to indicate acceptance to updated Terms)), any amendments to the Agreement shall be effective only if in writing and signed by an authorized representative of each party. In the event of any conflict between the provisions of these Terms and those of any Accepted Proposal, these Terms shall control.

(d) Binding Effect; Survival. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Any provisions of the Agreement creating obligations extending beyond the Term of the Agreement shall survive the expiration or termination of the Agreement, regardless of the reason for such termination.

(e) Assignment. Neither party may assign the Agreement or any of the rights or duties hereunder, without the prior written consent of the other, which consent shall not be unreasonably withheld; except that nothing herein shall be construed as prohibiting or restricting 2H's right to subcontract or delegate any portion of the Services to vendors or suppliers selected by 2H.

(f) No Third-Party Beneficiary. Neither party intends, in any manner whatsoever, to create an interest or beneficiary in a third party.

(g) Waiver. Failure of either party to insist upon strict performance of the Agreement, or to exercise any option herein, shall not be construed as a modification or waiver of any provision, right, or obligation under the Agreement.

(h) Headings and References; Construction; Counterparts. The headings and captions used in the Agreement are used for convenience only and are not to be considered in construing or interpreting the Agreement. The Agreement has been negotiated by the parties and their respective counsel. The Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. The Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument.

(i) Force Majeure. Neither party shall be liable for any failure or delay in its performance under the Agreement due to causes which are beyond its reasonable control, including, but not limited to, an act of God, act of civil or military authority, fire, epidemic, flood, earthquake, riot, war, invasion, riot or other civil unrest, national or regional emergency, sabotage, labor shortage or dispute, and governmental action; provided that the affected party: (1) gives the other party written notice of such cause promptly, and in any event within fifteen (15) days of discovery thereof; and (2) uses its reasonable efforts to correct such failure or delay in its performance. 2H's time for performance or cure under this Agreement will be extended for a period equal to the duration of the cause.