

# Terms and Conditions

Great Professional Websites, Inc. operating as Great Dental Websites (collectively, "**Company**") provides a range of marketing products and services for local businesses ("**Service(s)**"). This document describes the terms and conditions between you and Company ("**Services Terms**") for the Services described in your proposal ("**Proposal**"). The Proposal, once signed by the client ("**Client**"), sets forth which Services are being purchased by Client, the costs for such Services, and other relevant details. These Services Terms are incorporated by reference into and made a part of any Proposal submitted to Company and govern the relationship between Client and Company. These Services Terms also apply to any Services the Client may sign-up for without a Proposal throughout the course of Client's relationship with Company. All Proposals are subject to acceptance by Company, in its sole discretion. Proposal and any attachments or exhibits thereto, Services Terms, and the documents and/or links referenced in such documents are together referred to as the "**Agreement**."

If you are accepting on behalf of your employer or another entity, you represent and warrant that (i) you have full legal authority to bind your employer or such legal entity to this Agreement, (ii) you have read and understand this Agreement, and (iii) you agree, on behalf of Client, to this Agreement.

**SECTION 11 OF THIS AGREEMENT CONTAINS IMPORTANT PROVISIONS THAT GOVERN THE RESOLUTION OF DISPUTES BETWEEN CLIENT AND COMPANY, INCLUDING, WITHOUT LIMITATION, CLAIMS THAT AROSE OR WERE ASSERTED PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. SECTION 11 INCLUDES AN ARBITRATION AGREEMENT THAT REQUIRES, WITH LIMITED EXCEPTIONS, THAT ALL DISPUTES BE SUBMITTED TO BINDING AND FINAL ARBITRATION. CLIENT IS ADVISED TO REVIEW SECTION 11 CAREFULLY FOR A FULL UNDERSTANDING OF THE ARBITRATION AGREEMENT AND ITS IMPACT.**

**1. Terms and Conditions.**

- 1.1. These Services Terms shall apply to all Service agreements concluded between Company and Client to the exclusion of any other terms that Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2. These Services Terms and the Agreement may only be varied by express written agreement between Company and Client.

**2. Obligations of Company.**

- 2.1. Provide Agreed Services
  - a) Company shall provide the Services listed in the executed Proposal until either party elects to modify the Services as outlined in Section 4, Changes to Services, terminates the Agreement under the conditions outlined in Section 5, Term and Termination, or until Client becomes delinquent in payment as defined in Section 6, Pricing and Payment.

**3. Obligations of Client.**

- 3.1. Provide Feedback and Information
  - a) Client shall provide assistance, feedback, and technical information to Company in sufficient time to facilitate the execution of Proposal. Client shall have sole responsibility for ensuring the accuracy of all information provided to Company and warrants that Client's employees assisting in the execution

have the necessary skills and authority to provide this feedback and information on behalf of Client.

3.2. Client Responsible for Information

- a) Any content, data, images, credentials, materials or other information, whether original or modified, provided by Client (collectively, "**Client Information**") to Company is the responsibility of Client. Client, through their request to Company, is responsible for updating content via Company's website platform.
- b) Client will not upload, or send to Company for upload, any images or content that Client does not legally own or have rights to. Client understands that any illegally obtained content or copyrighted images or material are the sole liability of Client.
- c) Client is responsible for having a terms of use and privacy policy for any website hosted by Company as part of Services (Client's "Hosted Site"). The terms of use for Client's Hosted Site must designate Company as third-party beneficiary and must contain intellectual property, limitations of liability, limitations of remedy, disclaimers of warranty and indemnification provisions as favorable to Company as contained in this Agreement. Hosted Site's privacy policy at a minimum, must:
  - i) disclose any and all uses of personal information that Client collects from users;
  - ii) include a paragraph provided or approved by Company that describes Company's collection and use of Client's customer's information;
  - iii) provide a hypertext link to Client's privacy policy on the home page of Hosted Site and on all pages where Client collects personal information from users; and
  - iv) use personal information only as expressly permitted by Client's privacy policy.

If Company offers templates for a terms of use or privacy policy, Client understands these templates are "as is" and with no warranty of any kind. Client should consult an attorney on its website's practices. Client agrees to and hereby does indemnify, defend and hold Company, its directors, officers, employees, agents and other consultants and advisors free and harmless from and against any and all claims stemming from Client's failure to comply with this provision and/or Client's failure or refusal to abide by the terms and provisions of any applicable privacy policies or terms of use, or lack thereof.

**4. Changes to Services and the Agreement.**

- 4.1. Throughout the course of the Agreement, Client or Company may add, remove, or modify Services within the bounds of standard practice for each service as communicated by Company or its employee.
- 4.2. Company shall have the right to make any changes to Services which are necessary to comply with any applicable law or government regulation.
- 4.3. Subject to Section 11.8 of these Service Terms, Company reserves the right to modify these Service Terms upon notice published at [www.greatdental.com/terms-conditions](http://www.greatdental.com/terms-conditions). Such modifications may include changes to, without limitation, pricing and billing terms and dispute resolution procedures. Company may, but are not required to, also notify Client by email or other electronic notice. If Client does not agree to such changes or additions, then Client must

terminate this Agreement in accordance with Section 5.2 below and stop using the Service within five days after the effective date of such modifications. Client's continued use of the Services after this five-day period constitutes Client's acceptance of such modifications.

## 5. Term and Termination.

### 5.1. Term

- a) Agreement shall commence upon the execution of Proposal ("**Effective Start Date**") and unless otherwise provided in the specific Services description, shall continue until cancelled in accordance with the terms of the Agreement.

### 5.2. Termination

- a) The Agreement may be cancelled by either party at any time, upon written notice which may be provided by email subject to the terms of Section 6 below. Client remains responsible for all payments and obligations under the Agreement, including, but not limited to, the obligation to pay for all Services provided by Company up to the termination date. Upon notice of cancellation, Company will continue to provide any Services for the remainder of a previously invoiced and paid monthly cycle. If cancellation occurs prior to the launch of Hosted Site, development will cease and all completed artifacts will be delivered to Client upon request.
- b) Company is entitled to immediately terminate this Agreement without notice in the event that (i) Client's account becomes delinquent for Services not paid in accordance with these Terms, (ii) Client breaches the Agreement, or (iii) Client violates any applicable law.
- c) To terminate, Client needs to email [support@greatdental.com](mailto:support@greatdental.com) stating which service(s) Client is canceling and desired cancellation date, if different from the date of notice. If Client wishes to cancel prior to the next billing cycle, Client must notify Company, in writing, 2 business days prior to next billing cycle.

### 5.3. Effect of Termination; Survival.

- a) Client understands and acknowledges that due to the nature of the internet, certain information regarding Client that was posted on the internet as part of Services may continue to be available on the internet following termination of Services and/or Agreement. All provisions of Agreement that by their sense or nature should survive termination of Agreement (including, without limitation: all limits of liability, indemnity obligations, and confidentiality obligations) shall survive. Without limiting the generality of the foregoing, in the event of any termination, Client shall remain liable for any amounts due to Company as of the effective date of termination.

## 6. Pricing and Payment.

### 6.1. Payment for Services

- a) Client agrees to pay the amounts set forth in the signed Proposal in accordance with the timing set forth in Proposal. The fees and charges are divided into one-time fees and recurring fees.
- b) Client authorizes the Company to charge its credit card or debit card, or initiate an electronic funds transfer out of its bank account for payment of all or any portion of its Services fees and any other amounts payable under the Agreement, until such amounts are paid in full.

### 6.2. Collection of Amounts Owed

- a) Bills are due and payable by Client upon receipt of Company's invoice. Delinquent accounts are subject to deactivation at any time.
- 6.3. No Refunds
  - a) Client agrees payment is non-refundable, except as provided in the Guarantee, noted below.
  - b) Client is responsible for the full monthly service fee for any month Client receives service and any one-time fees. Company will not provide a pro-rata refund for any prepaid fees regardless of when Client's service is terminated.
- 6.4. Money Back Guarantee
  - a) Within 14 days from the Effective Start Date, Client may elect to evoke the Guarantee and receive a refund on any paid funds.
- 6.5. Changes in Pricing and Payment
  - a) The Company, at its sole discretion, may increase or decrease the fees, charges, and payment requirements for its Services provided that such changes are communicated via electronic or written communication with at least 30 days notice.

## 7. Intellectual Property

### 7.1. What We Own

- a) In providing Services, Company may provide Client access to materials, products, and proprietary software platforms, including, but not limited to: software, software documentation, all informational text, design layouts, photographs, graphics, audio, video, messages, interactive and instant messaging, design and functions, files, documents, or other materials, whether publicly posted or privately transmitted as well as all derivative works thereof (collectively, the "**Materials**"). Materials are owned by Company or other parties that have licensed their material or provided services to Company, and are protected by copyright, trademark, trade secret and other intellectual property laws.
- b) All Company trademarks and service marks, logos, slogans and taglines are the property of Company. All other trademarks, service marks, logos, slogans and taglines are the property of their respective owners.
- c) Except as otherwise specifically provided herein, nothing should be construed as granting any license or right to use any trademarks, service marks, logos, slogans or taglines displayed of Company without Company's express written permission, or the express written permission of such third-party that may own the trademark, service mark, logo, slogan or tagline.

### 7.2. Your Rights to Use What We Own or License

- a) Company may provide Client access to its proprietary software platform, thereby permitting Client access to various Materials as well as the ability to manage various aspects of the Hosted Site. Client agrees to:
  - i) not provide access to anyone who is not Client's employee; and
  - ii) to ensure all individuals permitted to use the software platform are aware of and have agreed to comply with the terms of the Agreement.
- b) Subject to the Agreement, Company grants Client a limited, revocable, non-transferable and non-exclusive license to use Materials through a user identification reference ("User ID") to the extent, and only to the extent, necessary to access and use Services in accordance with the terms of the

Agreement. This license does not permit Client, and Client agrees not to store, copy, reproduce, republish, modify, upload, post, translate, scrape, rent, lease, loan, sell, distribute, transfer, transmit, display, decompile, reverse engineer, reverse assemble, decipher or otherwise attempt to discover any programming code or any source code used in or with Materials, or otherwise distribute in any way the Materials other than as specifically permitted in the Agreement.

- c) Client may not sell, assign, sublicense, grant a security interest in or otherwise attempt to transfer any right in the Materials, create derivative works based on, or in any manner commercially exploit the Materials, in whole or in part, other than as expressly permitted in the Agreement.
- d) Client will not access the Services in order to
  - i) build a competitive product or service;
  - ii) build a product using similar ideas, features, functions or graphics of the Services; or
  - iii) copy any ideas, features, functions or graphics of the Services.
- e) Any use of Materials for any purpose other than as specifically permitted herein or without Company's prior written consent or the prior written consent of Company's licensors, as applicable, is expressly prohibited. Client further grants Company the right to place disclaimers, Company name, logo and hyperlink in the footer of Hosted Site. Client may request in writing or email that Company remove Company information from Hosted Site and Company will remove the information accordingly. Company reserves all rights not expressly granted in this Agreement.
- f) Services may include certain third-party software and services, which may require that Client enters into separate subscription or licensing agreements with third-party vendors. Client will comply with and, upon request, execute, any agreements that may be required for the use of such software or services, and to comply with the terms of any license or other agreement relating to third-party products included in Services or made accessible to Client through Services. Client's use of Services or of such third-party products or services will constitute Client's agreement to be bound by the terms of all licensing, subscription and similar agreements relating to such use.
- g) Client agrees that Materials available through Services are for informational and educational purposes only and are not intended to constitute professional advice, diagnosis, treatment, or to substitute Client's professional judgment. Company is not responsible for the accuracy or completeness of Materials available from or through Services. Client assumes full risk and responsibility for the use of Materials obtained from or accessed through Services.
- h) Client will comply with all applicable laws and regulations in using Company's software platform, Services and Materials pursuant to the Agreement, including laws, regulations, orders or other restrictions on export, re-export, or redistribution of software, and Client will obtain all necessary export licenses.

### 7.3. Rights to Materials Upon Termination

- a) Upon Termination, Client shall lose access and no longer have rights to any Materials, outside of those listed in Section 7.3 (b) and (c) below, including,

but not limited to, the proprietary software platform used to manage Hosted Site.

- b) Clients in good financial standing, whose account is paid in full for Services provided, shall be entitled to request and receive an export of HTML code to present a static version of Client's Hosted Site. An export is only provided upon written request or email to [support@greatdental.com](mailto:support@greatdental.com) by Client within 1 week of Termination. Upon delivery of exported code and associated artifacts, Client assumes all responsibility for managing the website including making the static website accessible online.
- c) Client will also maintain ownership and rights to their domain name(s), email address(es), and third-party directory accounts set up for SEO purposes.

## **8. Giving Us Access to Other Accounts and Services**

- 8.1. Some Services may require Client to give Company access to or provide login information and password information for accounts or services Client may have with third party providers. When Client provides this information or gives access to these third party accounts, Client agrees that Client has read all contracts and written agreements governing such access, login information and passwords and that Client has all the necessary contractual and legal rights to give such access, login information and passwords. In addition, for certain Services, Client grants Company permission to create and submit content on Client's behalf to press release news outlets, directories, search engines, social media, and other destinations.

## **9. Warranty, Limitation of Liability, and Indemnity.**

- 9.1. Company, and Company's subsidiaries and affiliates and their respective officers, directors, shareholders, employees agents, suppliers, licensors, and third-party content providers (collectively, "**Company Partners**") shall not be liable for any direct, indirect, or consequential costs or damages resulting from (i) the delay or stoppage in delivery of Services caused by a Force Majeure event as defined in Section 12.5 below, or (ii) Client's failure to provide Company with adequate delivery instructions, or any other instructions relevant to the supply of Services.
- 9.2. Company warrants that Services will conform with their description using reasonable care and skill to conform in material respects. Client expressly agrees that the use of Services is at the Client's sole risk, and the Services are distributed on an "as is" and "as available" basis. Except for the above express limited warranty, Company specifically disclaims all warranties of any kind, whether it be express or implied, with respect to any of the Services and Materials, including, without limitation, any warranties of title, implied warranty of merchantability, fitness for a particular purpose, accuracy, completeness of information content, non-infringement or otherwise, except where prohibited by applicable law.
- 9.3. Any claim by Client on account of breach of the express limited warranty in Section 9.2 above, shall be waived conclusively unless Client gives Company written notice thereof within 30 days of performance of the alleged defective Services by Company. Company shall not be responsible or liable to Client or to any third party for any lost profits, or incidental, consequential, indirect, special or contingent damages for any breach of the limited warranty, Company's liability and Client's exclusive remedy being limited to Company's choice of:
  - a) reperformance of the Services in order to correct any such defect;
  - b) the refund of fees for the defective Services; or
  - c) the granting of a reasonable allowance on account of such defects.

Company shall be given a reasonable opportunity to investigate all claims and to inspect allegedly defective Services.

- 9.4. To the maximum extent permitted by applicable law, neither Company nor any Company Partners shall be liable for any direct, indirect, incidental, special, punitive or consequential damages arising out of (i) use of the Services, (ii) inability to use the Services, (iii) any ancillary products or services provided or sold to Client, (IV) any breach of any representation or warranty. Without in anyway limited the foregoing, if for any reason, by operation of law or otherwise, any portion of the foregoing limitation of liability shall be voided, then in such event Company's maximum, sole, and exclusive liability and the liability of Company's Partners shall be limited to general money damages in an amount not to exceed the total amount actually paid to Company by Client for the applicable Service during and for a period of time commencing upon the occurrence of any error, defect, or failure and ceasing upon the discovery of such error, defect or failure, in whole or in part; provided, however, that in no event shall such period of time exceed the 12-month period immediately preceding the date which such error, defect or failure is first discovered in whole or in part.
- 9.5. Client agrees to and hereby does indemnify, defend and hold Company and Company Partners free and harmless from and against any liability arising from (i) information posted on Hosted Site, (ii) the Client Information, (iii) information stored on Client's website including, without limitation, any damage or destruction of Client Information and/or Services, (iv) any unauthorized use by any third party of Client Information, (v) any violation of any property rights of Client or any third party in Client Information and (vi) any claims of infringement or defamation with regards to the names of any other unique materials specified by Client for Hosted Site. It shall be Client's sole duty and liability to monitor Client Information to maintain its accuracy and completeness on its website and to promptly make all corrections, modifications, repairs and replacements which may be required in order to maintain Client Information on its website.
- 9.6. Company makes no representations or warranties and disclaims all liability relating to any third-party services, websites, or software used in connection with the Services.
- 9.7. Client agrees to and hereby does indemnify, defend and hold Company and Company Partners free and harmless from and against any and all loss, claim, damage, expense, penalty, demand, reparation, cost of defense, attorney's fees or liability whatsoever (whether paid or credited under settlement, order, judgment or otherwise) arising out of or in any way caused by or connected with Services furnished pursuant to this Agreement and/or Client Information, excluding only any claim within the scope of the limited warranty in Section 9.2 and remedy herein above set forth in this section.
- 9.8. Should any of Section 9 above be limited or excluded by law of Client's domicile, the invalidity of such terms and conditions shall in no way invalidate any other conditions in this Agreement.

10. **Your Representations, Warranties and Covenants.**

- 10.1. Client represents and warrants that Client has all necessary rights and authority to enter into the relationship with Company contemplated by Agreement. Client represents, warrants and covenants that any content or materials that Client provides to Company does not and will not:

- a) infringe on any third party's copyright, patent, trademark, trade secret, moral right or other proprietary rights or right of publicity or privacy;
- b) violate any law, statute, ordinance or regulation, including, without limitation, laws and regulations governing export control, false or misleading advertising or unfair competition;
- c) be defamatory or libelous;
- d) be pornographic or obscene; or
- e) contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines.

Client further represents, warrants and covenants that the product or service that is being (or will be) promoted through any campaign is lawful and not the subject of any ongoing investigation by any local, state or federal regulatory or quasi-regulatory authorities.

11. Dispute Resolution.

**PLEASE READ THIS SECTION CAREFULLY. IT REQUIRES CLIENT TO ARBITRATE DISPUTES WITH COMPANY AND LIMITS CLIENT'S ABILITY TO SEEK RELIEF THROUGH COURT PROCEEDINGS. THIS SECTION 11 OF THIS AGREEMENT SHALL BE REFERRED TO AS THE "ARBITRATION AGREEMENT." FOR CLIENTS LOCATED IN AUSTRALIA, THIS ARBITRATION AGREEMENT APPLIES SUBJECT TO THE COMMERCIAL ARBITRATION ACT 2010 (NSW), AND DOES NOT LIMIT ANY RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW THAT CANNOT LAWFULLY BE EXCLUDED.**

11.1. Scope.

- a) Client agrees that any disputes or claims, past, present, or future, arising out of or relating to the Agreement or Services ("**Claim(s)**") shall be resolved exclusively through binding arbitration, rather than in court, except for the following exceptions:
  - i) Either party may pursue Claims in small claims court in Colorado if the Claims so asserted qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-collective, non-representative) basis.; and
  - ii) Either party may seek equitable relief in court for infringement or other intellectual property misuse (such as, without limitation, trademarks, copyrights, domain names, patents).

If Client is located in Australia, any arbitration will be conducted in accordance with the Commercial Arbitration Act 2010 (NSW), and the seat of arbitration shall be Sydney, NSW.

- b) This Arbitration Agreement applies broadly to all legal Claims, including those based on contract, statute, tort, fraud, or misrepresentation, even if they arose before this Agreement or continue after its termination. This Arbitration Agreement shall not be interpreted to exclude or restrict any statutory consumer rights provided under the Australian Consumer Law ("**ACL**").
- c) This Arbitration Agreement does not prevent Client from reporting issues to government agencies.
- d) BY ACCEPTING THIS ARBITRATION AGREEMENT, CLIENT ELECTS NOT TO PARTICIPATE IN ANY ONGOING OR FUTURE PROCEEDINGS AGAINST COMPANY THAT ATTEMPT TO ASSERT CLAIMS ON A CLASS-, COLLECTIVE-, OR REPRESENTATIVE-WIDE BASIS.

11.2. Informal Dispute Resolution.



- a) Before arbitration, both parties must attempt to resolve disputes informally. The initiating party must send written notice and participate in a good-faith resolution conference (via phone, video, or in person) within 60 days of notice receipt. Participation in this process is mandatory and tolls any deadlines during this time.

11.3. Arbitration Process.

- a) This Arbitration Agreement evidences a transaction in interstate commerce and is governed by the Federal Arbitration Act ("**FAA**") in all respects. If for whatever reason the rules and procedures of the FAA cannot apply, the state laws of Colorado governing arbitration agreements shall apply. Before a party may initiate an arbitration proceeding, that party must send notice of an intent to initiate arbitration and certifying completion of the informal dispute resolution conference pursuant to Section 11.2(a) above. Such notice must be signed by hand by Client or a Company representative, and may not be signed electronically. If this notice is being sent to Company, it must be sent to 140 E 19th Ave, #200, Denver, CO 80203, to the attention of Great Dental Websites Legal Department. Company will send any such notice to Client's billing address.
- b) For Clients located in Australia, the arbitration shall be governed by the Commercial Arbitration Act 2010 (NSW).
- c) The arbitration will be conducted by ADR Services, Inc. under its rules and pursuant to the terms of the Agreement. Arbitration demands filed with ADR Services, Inc. must include (a) the name, telephone number, mailing address, and email address of the party seeking arbitration; (b) a statement of the legal claims being asserted and the factual basis of those claims; (c) a description of the remedy sought and an accurate, good-faith calculation of the amount in controversy, enumerated in United States Dollars (any request for injunctive relief or attorneys' fees shall not count toward the calculation of the amount in controversy unless such injunctive relief seeks the payment of money); and (d) the handwritten signature of the party seeking arbitration (electronic signatures are not permitted). Each arbitration demand must also include a signed certification from Client or Client's counsel that (a) Client has complied with the pre-arbitration informal dispute negotiation requirement set forth in Section 11.2(a) above; (b) the arbitration demand is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution; (c) the claims and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (d) the factual contentions have evidentiary support (or will after reasonable opportunity for further investigation or discovery). If Client is represented by counsel, Client's counsel may participate in the arbitration, but Client shall also fully participate in the arbitration.
- d) Disputes shall be subject to ADR Services, Inc.'s most current version of its Arbitration Rules, available at [www.adrservices.com/services/arbitration-rules](http://www.adrservices.com/services/arbitration-rules) or by calling ADR Services, Inc. at 310-201-0010 or by writing to the Company. The fees that shall apply to arbitrations administered by ADR Services, Inc. are set forth on ADR Services, Inc.'s website, available at [www.adrservices.com/ratefee-schedule](http://www.adrservices.com/ratefee-schedule). Specifically, the fees set forth in ADR Services, Inc.'s Mass Employment

Arbitration Fee Schedule shall apply when twenty (20) or more arbitration claims are filed which: (a) involve the same or similar parties; (b) are based on the same or similar claims which arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact; and (c) involve the same or coordinated counsel for the parties. In all other circumstances, the fees set forth in ADR Services, Inc.'s General Fee Schedule shall apply. Payment of all filing, administration, and arbitration fees will be governed by ADR Services, Inc.'s rules. If ADR Services, Inc. is not available to arbitrate, the parties will meet and confer to discuss mutually agreeing to an alternative arbitral forum. If ADR Services, Inc. is not available to conduct arbitration seated in Australia, the parties agree to appoint an arbitrator through the Resolution Institute or ACICA, or as otherwise agreed in writing, in accordance with the Commercial Arbitration Act 2010 (NSW). Client may choose to have the arbitration conducted by telephone, video conference, based on written submissions, or (if and only if ADR Services, Inc. is available to do so) in person in Colorado or at another mutually agreed location. For Clients in Australia, arbitration will be seated in Sydney, NSW, unless otherwise agreed. During the arbitration, neither party shall disclose to the arbitrator the amount of any settlement offer made by either party, until after the arbitrator determines the amount, if any, to which Client or Company is entitled.

11.4. Arbitrator Authority.

- a) The arbitrator—not any federal, state or local court or agency—has sole authority to decide disputes about this Arbitration Agreement's validity, enforceability, or scope. The arbitrator is bound by this Arbitration Agreement. All disputes regarding the payment of arbitrator or arbitration-organization fees shall be determined exclusively by an arbitrator. The arbitration will decide the rights and liabilities, if any, of Client and Company. The arbitration proceeding will not be consolidated with any other matters or joined with any other proceedings or parties unless both Client and Company otherwise agree in writing. The arbitrator will have the authority to grant motions dispositive of all or part of any Claim or dispute. The arbitrator will have the authority to award, on an individual basis, monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and the Agreement (including this Arbitration Agreement). The arbitrator will issue a written statement of decision describing the essential findings and conclusions on which any award (or decision not to render an award) is based, including the calculation of any damages awarded. The award shall be binding only among the parties and shall have no preclusive effect in any other arbitration or other proceeding involving a different party. The arbitrator shall follow the applicable law. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The arbitrator's decision is final and binding on Client and Company. In arbitrations seated in Australia, the arbitrator must apply the law of New South Wales and relevant federal Australian law, including consumer protections under the ACL.
- b) If the arbitrator finds that either the substance of Client's Claim or the relief sought in Client's Claim is frivolous or brought for an improper purpose (as

measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then payment of all fees related to the arbitration shall be governed by the applicable arbitration rules. In such case, Client agrees to reimburse the Company for all monies previously disbursed by it that are otherwise Client's obligation to pay under the applicable arbitration rules. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual Claim.

11.5. Waiver of Jury Trial.

- a) Client and Company waive all rights to sue in court and receive a judge or jury trial. Client and Company are instead electing to have Claims and disputes resolved by arbitration, except as specified in Section 11.1(a) above. There is no judge or jury in arbitration, and court review of an arbitration award is limited.
- b) This provision does not apply in Australia, where civil claims are determined by a judge without a jury.

11.6. Waiver of Class, Collective, Consolidated, or Representative Actions.

- a) CLIENT AND COMPANY EXPRESSLY AGREE TO WAIVE ANY RIGHT TO RESOLVE CLAIMS WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT ON A CLASS, COLLECTIVE, OR REPRESENTATIVE BASIS. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, COLLECTIVE, OR REPRESENTATIVE BASIS. CLAIMS OF MORE THAN ONE CUSTOMER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER. If, however, this waiver of class, collective, consolidated, or representative actions is deemed invalid or unenforceable with respect to a particular Claim or dispute, neither Client nor Company is entitled to arbitration of such Claim or dispute. Instead, all such Claims and disputes will then be resolved by a court in the United States District Court for the District of Colorado. This provision does not prevent Client from participating in a class-wide settlement of claims.
- b) This class action waiver does not apply where such a waiver would be unenforceable under applicable Australian law. If the waiver is found to be invalid in an Australian context, such Claims shall be resolved by a court of competent jurisdiction in New South Wales.

11.7. Survival.

- a) This Arbitration Agreement shall survive termination of the Agreement and Client's relationship with Company.

11.8. Changes.

- a) If Company modifies this Arbitration Agreement in the future, the change will not apply to any Claim with which Client has already submitted written notice.

11.9. One-Year Limitation.

- a) Client must bring any Claim related to the Services or this Agreement within 1 year, or it will be permanently barred.
- b) For Clients in Australia, this limitation period shall not apply to Claims where a longer period is required by applicable law, including statutory warranties under the ACL.

**12. General**

12.1. Governing Law.

- a) The Agreement is made in the State of Colorado. Agreement will be governed and construed in accordance with the laws of the State of Colorado without giving effect to conflict of laws principles. For Clients located in Australia, this Agreement will be governed by and construed in accordance with the laws of New South Wales, Australia. Nothing in this Agreement excludes, restricts, or modifies any rights or remedies that are available under the ACL and cannot be lawfully excluded.
- 12.2. Communication and Notices.
  - a) Client agrees that by entering into the Agreement and providing Company with Client's wireless phone number, telephone number, and/or email address, Company or its agents may contact Client for: (a) any Service-related issues by calling or texting Client at such number(s) using a prerecorded/artificial voice or text message delivered by an automatic telephone dialing system and/or using a call made by live individuals, and/or (b) for any service-related issues or for marketing purposes by sending an email to such email address. The consent provided here continues even if Client's Service terminates. If Client does not wish to receive marketing emails, Client may follow the opt-out instructions contained in any such email by making an opt-out request.
  - b) Company will communicate with Client by email, SMS or by posting notices on Company's sites and services. Client agrees that all agreements, notices, disclosures and other communications that Company provides to Client electronically satisfy any legal requirement that such communications be in writing.
- 12.3. Severability.
  - a) If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.
- 12.4. Assignment.
  - a) Client may not assign the Agreement without the prior written consent of Company. The parties' rights and obligations will bind and inure to the benefit of their respective successors, heirs, executors, joint administrators and permitted assigns.
- 12.5. Force Majeure.
  - a) Neither party shall have any liability for any failure or delay (other than with respect to payment obligations) resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or inventory shortage, unavailability of currency, transportation interruption of any kind, work slowdown or any other condition affecting production or delivery in any manner beyond the reasonable control of such party.