Maxim Edge Digital Marketing Terms of Service

These Terms of Service (this "**Agreement**") governs all advertising agency, promotion, and marketing services provided by Maxim Edge Digital Marketing ("**Maxim Edge**"). By executing a Statement of Work, Client agrees to the terms of this Agreement.

WHEREAS, Maxim Edge is in the business of providing advertising agency, promotion, and marketing services;

WHEREAS, Client wishes to retain Maxim Edge to provide, and Maxim Edge wishes to provide to Client, the services set out in the applicable Statement of Work (hereinafter, the "**Services**");

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Maxim Edge and Client (together, the "Parties", and each, a "Party") agree as follows:

1. Definitions. Capitalized terms have the meanings set forth or referred to in this Section.

    "**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity, or otherwise.

    "**Client Intellectual Property**" means any Intellectual Property owned by or licensed to Client.

    "**Client Materials**" means all materials, information, photography, writings and other creative content provided by Client for use in the preparation of and/or incorporation in the Deliverables.

    "**Deliverables**" means all documents, work product, and other materials identified as "Deliverables" in a fully executed Statement of Work.

    "**Intellectual Property**" means any and all trade secrets, Trademarks, service marks, trade dress, trade names, brand names, logos, corporate names, and domain names, whether registered or unregistered, original works of authorship and related copyrights, and any other intangible property in which any person holds proprietary rights, title, interests, or protections, however arising, pursuant to the laws of any jurisdiction throughout the world, including all applications, registrations, renewals, issues, reissues, extensions, divisions, and continuations in connection with any of the foregoing and the goodwill connected with the use of and symbolized by any of the foregoing.

    "**Losses**" means losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney fees, fees, and the costs of enforcing any right to

indemnification under this Agreement and the cost of pursuing any insurance providers.

"**Pre-Existing Materials**" means any documents, data, know-how, methodologies, software, and other materials, including computer programs, reports, and specifications, provided by or used by Maxim Edge in connection with performing the Services, in each case developed or acquired by Maxim Edge prior to the commencement or independently of this Agreement.

"**Representatives**" means a Party's affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors, and permitted assigns.

"**Supporting Technology**" means any Intellectual Property created by Maxim Edge in the course of providing the Services but not expressly identified as a "Deliverable."

"**Third-Party Materials**" means proprietary third-party materials which are incorporated into the Deliverables, including stock footage, photos, music, software, etc.

"**Trademarks**" means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, corporate names, and domain names, and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

2. Maxim Edge Services and Responsibilities.

2.1 Maxim Edge Services. Maxim Edge shall use commercially reasonable efforts to provide the Services to Client within the time(s) identified in the Proposal, in accordance with the terms of this Agreement, and in a professional and diligent manner consistent with industry standards and good business practice. Any request by Client for Maxim Edge to provide additional services beyond what is provided in the Statement of Work shall be set forth in a separate and new statement of work, which may be added as an addendum to this Agreement upon the written consent of both Parties.

2.2. Maxim Edge Statement of Work.

a) Maxim Edge shall submit to Client for approval a written Proposed SOW detailing the timeline and procedure for performing the Services (the "Proposed Statement of Work" or "Proposed SOW"). Within seven (7) calendar days after receiving the Proposed SOW, Client shall provide Maxim Edge with written notice approving or disapproving the Proposed SOW.

b) If the Client does not deliver written approval of the Proposed SOW within (7) calendar days, the Proposed SOW will be deemed disapproved. If Client disapproves of the Proposal, Maxim Edge shall have seven (7) more calendar days to submit a revised Proposed SOW to Client (the "Revised Proposed SOW"). Client shall provide Maxim Edge with written notice approving or disapproving the Revised Proposed SOW no later than seven (7) more calendar days after Client receives the Revised Proposed SOW. If Client does not approve the Revised Proposed SOW, Client shall have the right to terminate this Agreement in accordance with Section 10.2(c).

c) Prior to their public release, Maxim Edge shall submit to Client for approval the Deliverables and any materials that Maxim Edge proposes be displayed, published, reproduced, distributed, or otherwise made publicly available in connection with the provision of the Services. Within seven (7) calendar days after receiving a submission and request for approval from Client, Client shall provide Maxim Edge with written notice approving or disapproving the materials submitted. If the Client does not deliver written approval within seven (7) calendar days, (i) the submission will be deemed disapproved and (ii) until Maxim Edge revises the materials to the satisfaction of the Client, the materials shall not be publicly released.

2.3. Change Orders.

a) If either Party wishes to change the scope or performance of the Services under a Statement of Work, and/or the fees or any performance dates set forth thereunder, it shall submit details of the requested change to the other Party in writing. Maxim Edge shall, within a reasonable time after such request, provide a written estimate to Client of:

(i) the likely time required to implement the change;

(ii) any necessary variations to the fees and other charges for the Services arising from the change;

(iii) the likely effect of the change on the Services; and

(iv) any other impact the change might have on the performance of this Agreement.

b) Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing.

c) Notwithstanding anything to the contrary in this Agreement, Maxim Edge may, from time to time, change the Services without the consent of Client provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Statement of Work or Proposal.

d) Client agrees to pay all costs and fees associated with a Change Order in the amounts and according to the payment schedule set forth in the Statement of Work or as otherwise agreed to by the Parties in the Change Order. Maxim Edge reserves the right to charge for the time it spends assessing and documenting a change request from Client one time and materials basis in accordance with the Statement of Work.

e) If the Parties do not agree on the terms and conditions of the Change Order in accordance with the terms and conditions of this Agreement then, if Maxim Edge is the Party requesting the dispute-related change, Maxim Edge may, in its sole discretion, terminate the Agreement, including all Statements of Work, which termination is effective immediately on delivery of notice to Client. Notwithstanding the foregoing, pending resolution of any dispute, Maxim Edge shall continue to perform its obligations then-existing under this Agreement, and Customer shall continue to pay Maxim Edge amounts as and when due and owing in accordance with the terms of this Agreement.

2.4. No Exclusivity.

Maxim Edge retains the right to perform the same or similar type of services for third parties during and after the Term of this Agreement.

2.5. Third-Party Providers.

a) Maxim Edge may, in its sole discretion, engage independent consultants, contractors, subcontractors, or affiliates ("**Third-Party Providers**"), to provide any Services or Deliverables to Client. Such engagement shall not relieve Maxim Edge of its obligations under the Agreement, and Maxim Edge shall remain fully responsible for the performance of each such Third-Party Provider and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Maxim Edge's own employees.

3, Client Obligations and Responsibilities.

3.1. Client shall:

a) provide copies of or access to such Client Materials as Maxim Edge may reasonably request in order to carry out the Services in a timely

manner, and ensure that they are complete and accurate in all material respects;

b) respond promptly to any Maxim Edge request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Maxim Edge to perform the Services in accordance with the requirements of this Agreement; and

c) provide Maxim Edge with Client Materials in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Statement of Work.

3:2. Client acknowledges and agrees that Maxim Edge's ability to carry out the Services in a timely manner is dependent on Client's prompt performance of its obligations herein and that any delays in Client's performance may delay delivery of the Deliverables and its ability to provide the Services.

4. Intellectual Property Rights; Ownership.

4.1. License to Certain Client Intellectual Property.

a) Subject to and in accordance with the terms and conditions of this Agreement, Client grants Maxim Edge, its affiliates, and its Third-Party Providers a limited, non-exclusive, royalty-free, non-transferable, and non-sub licensable, worldwide license during the Term to use, solely in connection with the Services: (i) Client's Trademarks; (ii) Client's domain names, website addresses, websites, and URL's; and (iii) any Trademarks created by Maxim Edge on Client's behalf as part of the Services.

b) Client grants no other right or license to any Client Intellectual Property to Maxim Edge by implication, estoppel, or otherwise. Maxim Edge acknowledges that Client owns all right, title, and interest in, to, and under Client's Trademarks and that Maxim Edge shall not acquire any proprietary rights therein. Any use by Maxim Edge or any Representative of such marks and all goodwill associated therewith shall inure to the benefit of Client.

4.2. Ownership of and License to Deliverables.

a) Except as set forth in Section 4.2(b) and (c), and upon payment in full of all amounts due, 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 therein. Maxim Edge agrees, and will cause Maxim Edge 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," Maxim Edge will, upon payment in full of all amounts due, irrevocably assign, and cause Maxim Edge 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 therein.

b) Maxim Edge and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to the Pre-Existing Materials and all Supporting Technology, including all Intellectual Property therein. Maxim Edge hereby grants Client and its affiliates a perpetual, limited, royalty-free, non-transferable (except in accordance with Section 11.11), non-sublicenseable, 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 Pre-Existing Materials 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 Services and Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by Maxim Edge.

c) All Third-Party Materials shall remain the sole and exclusive property of its owners. Maxim Edge shall inform Client of any and all Third-Party Materials that may be required to perform the Services or it otherwise incorporates into the Deliverables. Maxim Edge shall inform Client of any need to license such Third-Party Materials, at Client's expense, and unless otherwise provided for by Client, Client shall obtain any and all licenses necessary to permit Client's use of the Third-Party Materials consistent with the usage rights granted herein.

5. Fees and Expenses; Payment Obligations.

5.1. Fees and Expenses.

a) In consideration of the provision of the Services and the rights granted to Client under this Agreement, Client shall pay Maxim Edge:

i. fees in the amounts and according to the payment schedule set forth in the Statement of Work for the Services described therein ("**Fixed Fees**");

ii. any and all costs for external and variable services associated with Maxim Edge's provision of Services to

Client, on a time and materials basis, including, but not limited to, software fees, hosting fees, equipment rental, photographer costs and fees, photography and/or artwork licenses, prototype production costs, talent fees, music licenses, and online access or hosting fees, calculated in accordance with the hourly fee rates set forth on the Statement of Work and Maxim Edge's actual cost for any materials, machinery, equipment, and third-party services reasonably necessary for the provision of each service ("**Variable Fees**"). Such Variable Fees shall be approved by Client in advance in writing and be in addition to all other amounts payable under the Statement of Work, despite any maximum budget, contract price or final price identified therein; and

iii. all reasonable out-of-pocket and incidental expenses incurred by Maxim Edge in connection with the performance of the Services including, but not limited to, costs for postage, shipping, overnight courier, previous hosting services, additional artwork, and purchased stock photography, as set forth on the Statement of Work or that have been approved in advance in writing by Client ("Expenses").

b) Maxim Edge shall issue monthly invoices to Client for the fees that are then payable, together with a detailed breakdown of any Expenses incurred.

c) Payment to Maxim Edge of the Fixed Fees, Variable Fees, and Expenses shall constitute payment in full for the performance of the Services, and Client shall not be responsible for paying any other fees, costs, or expenses.

5.2. Payment.

a) Client shall pay all properly invoiced amounts due to Maxim Edge within fourteen (14) calendar days after Client's receipt of such invoice.

b) Client shall make all payments in US dollars by check, credit card, or wire transfer in accordance with the instructions on the Statement of Work. If Client chooses to pay with a credit card, a 3% transaction fee will be added to Client's invoice.

5.3. Taxes.

All fees payable by Client under this Agreement are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on such amounts. Maxim Edge shall be responsible for any taxes imposed on, or with respect to, Maxim Edge's income, revenues, gross receipts, personnel, or real or personal property, or other assets.

5.4. Invoice Disputes.

Client shall notify Maxim Edge in writing of any dispute with an invoice (along with substantiating documentation within seven (7) calendar days from the date of such invoice. Client will be deemed to have accepted all invoices for which Maxim Edge does not receive timely notification of dispute, and shall pay all undisputed amounts due under such invoices within the period set forth in Section 5.2. The Parties shall seek to resolve all such disputes expeditiously and in good faith.

5.5. Late Payments.

Except for invoiced payments that Client has successfully disputed, Client shall pay interest on all late payments, calculated daily and compounded monthly at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Client shall also reimburse Maxim Edge for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding Fixed Fees, Variable Fees, and Expenses.

6. Representations, Warranties, and Covenants.

6.1. Mutual Representations, Warranties, and Covenants.

Each Party represents, warrants, and covenants to the other that:

a) it is a legal entity duly organized, validly existing, and in good standing in the jurisdiction of its incorporation;

b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement;

c) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;

d) it has not, and during the Term will not, enter into any oral or written contract or negotiations with any third party that would impair the rights granted to the other Party under this Agreement, or limit the effectiveness of this Agreement, nor is it aware of any

claims or actions that may limit or impair any of the rights granted to the other Party hereunder;

e) the execution of this Agreement by its Representative whose signature is set forth at the end hereof and the delivery of this Agreement by the Party has been duly authorized by all necessary corporate action of the Party;

f) this Agreement has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms; and

g) it is now and through the Term shall remain in compliance with all laws applicable to the performance of its obligations under this Agreement.

6.2. Maxim Edge Representations, Warranties, and Covenants.

Maxim Edge represents, warrants, and covenants to Client that:

a) it has and shall maintain in full force and effect during the Term, all necessary licenses, permits, consents, and authorizations as may be reasonably necessary in connection with the provision of the Services;

b) it shall materially comply with, and shall ensure that its Third-Party Providers comply with, all specifications, rules, regulations, and policies of Client that are communicated to Maxim Edge in writing;

c) Client will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind; and

d) to the knowledge of Maxim Edge, none of the Services, Deliverables, or Client's use thereof infringe or will infringe any registered Intellectual Property of any third party arising under the laws of the United States, excluding any infringement or claim, litigation or other proceedings to the extent arising out of (i) any Client Materials or any instruction, information, designs, specifications, or other materials provided by Client to Maxim Edge, (ii) use of the Deliverables in combination with any materials or equipment not supplied or specified by Maxim Edge, if the infringement would have been avoided by the use of the Deliverables not so combined, and (iii) any modifications or changes made to the Deliverables by or on behalf of any person other than Maxim Edge. Maxim Edge's sole liability and Client's

sole and exclusive remedy for Maxim Edge's breach of this Section are Maxim Edge's obligations and Client's rights under Section 7.2.

6.3. Client Representations, Warranties, and Covenants.

Client represents, warrants and covenants to Maxim Edge that:

a) it has provided Maxim Edge with a copy of any applicable internal policies or procedures and a written description of any specifications or other requirements or restrictions applying to any of the Services;

b) it has and shall maintain throughout the Term, all rights, licenses, and consents required in connection with this Agreement, including any such right or licenses required to lawfully use, and to authorize Maxim Edge to use, any Client Intellectual Property or Client Materials provided to Maxim Edge for use in connection with this Agreement;

c) the Client Materials do not infringe any Intellectual Property Rights or rights of privacy or publicity of any third party;

d) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third-Party Materials; and

e) Client shall comply with all laws and regulations as they relate to the Services and the Deliverables.

6.4. NO OTHER REPRESENTATIONS OR WARRANTIES; NON-RELIANCE. ALL SERVICES, MATERIALS, AND INFORMATION PROVIDED BY MAXIM EDGE ARE PROVIDED "AS IS." MAXIM EDGE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, MAXIM EDGE MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, MATERIALS, OR INFORMATION OR ANY RESULTS OF THE USE OF ANY OF THEM, WILL MEET CLIENT'S OR OTHER PERSONS' REQUIREMENTS OR EXPECTATIONS, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER SERVICES, MATERIALS, OR INFORMATION, OR ARE ACCURATE, COMPLETE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OF SUCH THIRD-PARTY MATERIALS.

7: Indemnification.

7.1. Client Indemnification Obligations.

Client shall defend and hold harmless Maxim Edge and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Maxim Edge Indemnified Party"), from and against any and all Losses arising out of or resulting from any third-party Claim alleging:

a) breach by Client of any representation, warranty, covenant, or other obligations set forth in this Agreement; (b)

b) gross negligence or more culpable act or omission of Client or its personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; and

c) that any Client Materials or Client Intellectual Property or Maxim Edge's receipt or use thereof in accordance with the terms of this Agreement infringes any Intellectual Property of a third party.

7.2. Maxim Edge Indemnification Obligations.

Maxim Edge shall defend, indemnify, and hold harmless Client, and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Client Indemnified Party**"), from and against any and all Losses, arising out or resulting from any third-party Claim alleging:

a) breach by Maxim Edge of any obligations set forth in this Agreement;

b) gross negligence or more culpable act or omission of Maxim Edge Indemnifying Party or its personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement;

c) that any of the Services or Deliverables or Client's receipt or use thereof infringes any Intellectual Property of a third party arising under the laws of the United States.

7.3. Exceptions and Limitations on Indemnification.

a) Notwithstanding anything to the contrary in this Agreement, neither Party is obligated to indemnify or defend the other Party or any of its Representatives against any Losses arising out of or resulting, in whole or in part, from the other Party's:

    (i) willful, reckless or negligent acts or omissions; or

    (ii) bad faith failure to comply with any of its obligations set forth in this Agreement.

b) Notwithstanding anything to the contrary in this Agreement, Client shall have no obligations to indemnify or defend Maxim Edge or any of its

Representatives against any Losses arising out of or resulting, in whole or in part, from infringement claims relating to:

(i) any Deliverables or any instruction, information, designs, specifications, or other materials provided by Maxim Edge in writing to Client;

(ii) Maxim Edge's use of any Client Materials or Client Intellectual Property in combination with any materials or equipment not supplied to Maxim Edge or specified by Client in writing, if the infringement would have been avoided by the use of the Client Materials or Client Intellectual Property not so combined; or

(iii) any modifications or changes made to the Client Materials or Client Intellectual Property by or on behalf of any Person other than Client or Client personnel. 7A.

c) Notwithstanding anything to the contrary in this Agreement, Maxim Edge shall have no obligations to indemnify or defend Client or any of its Representatives against any Losses arising out of or resulting, in whole or in part, from infringement claims relating to:

i. any Client Materials or any instruction, information, designs, specifications, or other materials provided by Client in writing to Maxim Edge;

ii. Client's use of the Deliverables in combination with any materials or equipment not supplied to Client or specified by Maxim Edge in writing, if the infringement would have been avoided by the use of the Deliverables or Intellectual Property of Maxim Edge not so combined; or

iii. any modifications or changes made to the Deliverables by or on behalf of any Person other than Maxim Edge or Maxim Edge personnel.

7.4. Indemnification Procedures.

A Party seeking indemnification under this Section (the"**Indemnified Party**") shall give the Party from whom indemnification is sought (the "**Indemnifying Party**"): (a) prompt notice of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure; and (b) reasonable cooperation, at the Indemnifying Party's expense, in the defense of such claim. The Indemnifying Party shall have the right to control the defense and settlement of any such claim; provided, however, that the Indemnifying Party shall not, without the

prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interest. The Indemnified Party shall have the right to participate in the defense at its own expense.

8. Limitation of Liability.

8.1. NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES.

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, EXCEPT IN CONNECTION WITH A PARTY'S WILLFUL MISCONDUCT, GROSS NEGLIGENCE, FRAUD AND/OR CLIENT'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF USE, REVENUE OR PROFIT, BUSINESS INTERRUPTION, AND LOSS OF INFORMATION), 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.

8.2. MAXIMUM LIABILITY.

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, EXCEPT IN CONNECTION WITH A PARTY'S WILLFUL MISCONDUCT, GROSS NEGLIGENCE, FRAUD AND/OR CLIENT'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL EXCEED THE TOTAL OF THE AMOUNTS PAID TO MAXIM EDGE BY CLIENT PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. 10.

9. Confidentiality.

From time to time during the Term, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") information about its business affairs and services, confidential information and materials comprising or relating to Intellectual Property, trade secrets, third-party confidential information, and other sensitive or proprietary information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 9 by the Receiving Party or any of its Representatives; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not

and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party; (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (e) is required to be disclosed pursuant to applicable law. The Receiving Party shall, for the Term and twelve (12) months thereafter: (x) 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; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any Person, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. The Receiving Party shall be responsible for any breach of this Section caused by any of its Representatives. On the expiration or earlier termination of this Agreement, the Receiving Party and its Representatives shall, pursuant to Section 10.3, promptly return or destroy all Confidential Information and copies thereof that it has received under this Agreement.

10. Term; Termination.

10.1. Term.

The term of this Agreement commences on the Effective Date, as defined in the Statement of Work, and continues until completion of the Services in accordance with the Statement of Work, unless earlier terminated in accordance with the terms of this Agreement (the "**Term**").

10.2. Termination for Cause.

a) Either Party may terminate this Agreement, effective upon written Notice, to the other Party (the "Defaulting Party") if the Defaulting Party:

i. 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 ten (10) days after receipt of written notice of such breach;

ii. becomes insolvent or is generally unable to pay its debts as they become due;

iii. files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject,

voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;

iv. 10 (iv) makes or seeks to make a general assignment for the benefit of its creditors;

v. applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

vi. is dissolved or liquidated.

b) Maxim Edge may terminate this Agreement, effective upon written Notice to Client if:

i. Client fails to make timely payments ("**Payment Failure**") for seven (7) days after Client's receipt of written notice of nonpayment;

ii. within any two (2) month period, two (2) or more Payment Failures occur; or

iii. Maxim Edge is unable to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event that lasts for more than thirty (30) days.

c) Client may terminate this Agreement, effective upon written Notice to Maxim Edge if Maxim Edge fails to deliver a satisfactory Revised Proposed SOWin accordance with Section 2.2(b).

10.3. Effect of Expiration or Termination.

a) Expiration or termination of this Agreement will not affect any rights or obligations that:

i. are to survive the expiration or earlier termination of this Agreement; and

ii. were incurred by the Parties prior to such expiration or earlier termination.

b) Upon the expiration or termination of this Agreement for any reason, each Party shall promptly:

i. return to the other Party or destroy all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information;

ii. permanently erase all of the other Party's Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery or information technology backup systems, which it shall destroy upon the normal expiration of its backup files; and

iii. certify in writing to the other Party that it has complied with the requirements of this clause; provided, however, that Client may retain copies of any Confidential Information of Maxim Edge incorporated in the Deliverables or to the extent necessary to allow it to make full use of the Services and any Deliverables.

C) Maxim Edge shall be compensated for the Services performed through the date of termination in the amount of a prorated portion of the Fixed Fees due, in addition to any and all Variable Fees and Expenses incurred through and up to the date of termination.

d) All amounts payable by Client to Maxim Edge of any kind under this Agreement are immediately payable and due no later than seven (7) calendar days after the effective date of the expiration or termination of this Agreement.

11. Miscellaneous.

11.1. Further Assurances.

Upon a Party's reasonable request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

11.2. Entire Agreement.

This Agreement, including the related Statement of Work and any and all schedules attached hereto, constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

11.3. Survival.

Subject to the limitations and other provisions of this Agreement, the following sections shall survive the expiration or earlier termination of this Agreement: Representations, Warranties, and Covenants; Fees and Expenses; Payment Obligations; Indemnification; Limitation of Liability; Confidentiality; Term; Termination; and Miscellaneous, as well as any other provision that, in

order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.

11.4 Notices.

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or e-mail (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 11.4.

11.5. Headings.

The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

11.6. Severability.

In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so this Agreement shall otherwise remain in full force and effect.

11.7. Amendment and Modification.

No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized Representative of each Party.

11.8 Waiver.

a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by an authorized Representative of the Party waiving its right.

b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement:

i. any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement; or

ii. any act, omission, or course of dealing between the Parties.

11.9. Cumulative Remedies.

All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either 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, by statute, in any other agreement between the Parties or otherwise.

11.10. Equitable Remedies.

The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

11.11. Assignment.

Neither Party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that either Party may assign this Agreement to an affiliate, a successor-in-interest by consolidation, merger, or operation of law or to a purchaser of all or substantially all of the Party's assets. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance 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.

11.12. No Third-party Beneficiaries.

a) Subject to Section 11.12(b), this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

b) The Parties hereby designate the Client Indemnified Parties and Maxim Edge Indemnified Parties as third-party beneficiaries of Section 7 of this Agreement having the right to enforce Section 7.

11.13. Choice of Law; Forum; No Jury Trial.

This Agreement, including all documents and exhibits, schedules, attachments, and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, shall be governed by, and construed in accordance with, the laws of the State of Texas, United States of America without giving effect to any conflict of laws provisions thereof. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement and thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the courts of the State of Texas sitting in Travis County, and any appellate court thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the courts of the State of Texas sitting in Travis County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.14. 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.

11.15. Force Majeure.

a) Maxim Edge shall not be liable or responsible to Client, 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, when and to the extent such failure or delay is caused by or results from acts beyond Maxim Edge's reasonable control, including, without limitation: i) acts of God; ii) flood, fire, or explosion; iii) war, invasion, riot, or other civil unrest; iv) actions, embargoes, or blockades in effect on or after the date of this Agreement; v) national or regional emergency; vi) strikes, labor stoppages, or slowdowns or other industrial disturbances; vii) compliance with any law or governmental order, rule, regulation,

or direction, or any action taken by a governmental authority; viii) shortage of adequate power or telecommunications or transportation facilities; or ix) any other event which is beyond the reasonable control of Maxim Edge (each of the foregoing, a "**Force Majeure Event**").

Maxim Edge shall give Notice to Client if its performance is affected by a Force Majeure Event, 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.

11.16. Relationship of Parties.

Nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Maxim Edge is an independent contractor pursuant to this Agreement. Neither Party has 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.

11.17. Public Announcements.

Client grants Maxim Edge a non-exclusive, non-transferable, royalty-free license to use Client's name and Trademarks to identify Client as a client of Maxim Edge's and, upon written approval by Client, in marketing materials, group press releases with other clients, and on Maxim Edge's website. Maxim Edge may also issue a press release announcing the business relationship between the Parties, upon approval of Client.

11.18. Non-solicitation.

During the Term of this Agreement and for a period of two (2) years thereafter, Client shall not solicit, nor attempt to solicit, either directly or indirectly, any employees or Third-Party Providers of Maxim Edge's.