Updated: July 30, 2019

**_excelerate_ Terms and Conditions**
**for Marketing, Advertising and Creative Services**

Thank you for choosing *excelerate digital* ("**Company**") as your partner in marketing, advertising and creative services. We are excited to work with you! Below are the terms and conditions (the "**Terms**") that will govern our relationship and the services provided.

BY EXECUTING ANY ORDER FORM, INSERTION ORDER, STATEMENT OF WORK OR OTHER CONTRACTUAL INSTRUMENT FOR THE COMPANY'S SERVICES (ANY "**CONTRACT**"), THE EXECUTING PARTY (THE "**CLIENT**") AGREES TO BE BOUND BY THESE TERMS. PLEASE READ THESE TERMS CAREFULLY BEFORE SIGINING YOUR CONTRACT.

**1. THE AGREEMENT**

A. The Contract. These Terms apply to any Company-approved Contract. Contracts are not valid until signed by both the Client and the Company. Each Contract will specify, at minimum, the services to be performed (the "**Services**"), the associated fees, and the target performance dates/term of performance. All Contracts are firm and non-cancelable except as stated in the Contract itself or in these Terms.

B. The Parties. The Contract is between Company and Client. If the Client is an advertising or marketing agency (an "**Agency**") procuring services on behalf of one of its advertising clients (its "**Advertiser(s)**"), the Agency hereby warrants that it has all necessary authority to bind the Advertiser to the Contract and these Terms. Agency and Advertiser shall be jointly and severally liable hereunder. Throughout these Terms, *excelerate digital* may be referred to as the "Company" or "we," and the Client may be referred to as "Client" or "you." Where the Client is an Agency, all references to "you" or "Client" shall apply equally to the Agency and the Advertiser.

C. Service-Specific Terms. Certain Services in your Contract may have their own service-specific terms and conditions ("**Service-Specific Terms**"). Service-Specific Terms may be required for services such as: (i) print advertising in McClatchy publications (ii) editorial sponsorships for McClatchy publications; (iii) event sponsorships; and (iv) call tracking services. Ask your Company representative if your Services are subject to any Service-Specific Terms. Service-Specific Terms will be incorporated into these Terms via an addendum. In the event of a conflict between these Terms and any applicable Service-Specific Terms, the Service-Specific Terms will control *solely* as it relates to the referenced Service(s).

D. Data Addendum. Services that involve the exchange of sensitive personally identifiable information or the processing of personal data belonging to data subjects in the European Economic Area will require an additional data addendum (a "**Data Addendum**"). Ask your Company representative if you need a Data Addendum for your Services. Any Data Addendum will be incorporated into these Terms by reference. In the event of a conflict between these Terms and the Data Addendum, the Data Addendum will control.

E. The Agreement; No Other Terms. Together, your Contract, these Terms, and any applicable Service-Specific Terms or Data Addendum make up the "**Agreement**." You acknowledge that you have not relied on any statement, promise or representation not set out in the Agreement. Any samples, drawings, descriptions or illustrations contained in the Company's marketing materials are for the sole purpose of giving a general idea of the services described in them; they do not form part of the Agreement. ANY ADDITIONAL OR CONFLICTING TERMS PROVIDED VIA A CLIENT'S PURCHASE ORDER, CONTRACT, INSERTION CONTRACT OR OTHER WRITTEN INSTRUMENT ARE VOID; THEY WILL NOT APPLY TO OR ALTER THE TERMS OF THIS AGREEMENT.

**2. PROMOTIONAL MATERIALS**

A. Promotional Materials. "**Promotional Materials**" means the advertisements, content, creatives and other campaign materials used in the Services, including all of the individual components thereof (such as images, graphics, photos, text copy, website designs, code, branding features, video elements, and other intellectual property components). You will have the opportunity to review and approve any Promotional Materials before they are used, published or distributed by the Company. The period for review and acceptance of Promotional Materials will vary depending on the Service. Your Company representative will communicate these deadlines to you in writing, why may include email.

B. Client Materials. "**Client Materials**" are the Promotional Materials that the Client (or one of its representatives) provides to the Company for use in the Services. The Client retains all rights in and to its Client Materials except for the limited rights granted to the Company under the Agreement. By providing the Company with Client Materials, you warrant that: (1) you have reviewed and approved the Client Materials for use as-provided in the Services; (2) you have all of the rights and licenses necessary for the Company and its Partners (defined in Section 6 below) to use the Client Materials in the Services; (3) the use of the Client Materials by the Company and its Partners will not infringe on any third-party rights, including intellectual property rights, or rights of privacy or publicity; and (4) the Client Materials do not contain any of the following "**Prohibited Materials"**: (i) malicious code, including malware, trojan horses, time bombs, viruses, adware or spyware (but excluding cookies to the extent disclosed in the Client's privacy policy); (ii) content which is false or misleading, obscene or sexual in nature, graphicly violent, slanderous or defamatory, bigoted/hate-oriented, or abusive/advocating violence; (iii) content that promotes any illegal activity including spam, mail fraud, pyramid schemes, or investment opportunities or advice not permitted by law; or (iv) content which promotes the sale of alcohol, tobacco products, prescription drugs, recreational drugs, weapons (including ammunition and firearms), or casino gambling or sweepstakes in a manner that is inconsistent with applicable laws, regulations or industry self-regulatory standards. We may refuse, reject, or remove any Client Materials or cancel any advertising space reservation at any time if we believe your Client Materials violate any of the above warranties. THE COMPANY'S ACCEPTANCE AND USE OF ANY CLIENT MATERIALS DOES NOT IMPLY THAT SUCH MATERIALS CONFORM TO THE ABOVE-LISTED WARRANTIES. THE COMPANY EXPRESSLY DISCLAIMS ALL LIABILITY FOR THE CLIENT MATERIALS AND ANY COMPONENTS THEREOF, EXCEPT TO THE EXTENT THAT THE CLIENT MATERIALS HAVE BEEN MATERIALLY ALTERED BY THE COMPANY WITHOUT THE CLIENT'S AUTHORIZATION.

C. Deliverables. "**Deliverables**" means any Promotional Materials that the Company develops specifically for the Client pursuant to the Contract. Deliverables may include images, websites, artwork, designs, code, text, works of authorship, and other works eligible for intellectual property protection. DELIVERABLES DO *NOT* INCLUDE "COMPANY MATERIALS" AND "THIRD-PARTY MATERIALS" as each term is defined in below. Except as set forth in the Contract or associated documentation, all original, copyrightable aspects of the Deliverables will be considered a "work made for hire" within the meaning of the Copyright Act of 1976, as amended, and in any event the Company expressly assigns to the Client all rights, title and interest in and to the Deliverables upon Client's payment of all associated fees. Subject to these Terms, the Company retains only a limited license to use select portions of the Deliverables for the limited purpose of promoting the Company's services to other potential clients (or as otherwise permitted by you in writing). The Company warrants that, to the best of its knowledge, the Deliverables, as originally provided to you, do not infringe on any third-party rights.

D. Third-Party Materials. Depending on the Services, the Company may need to incorporate some third-party intellectual property ("**Third-Party Materials**") into the Promotional Materials. Some common examples of Third-Party Materials include stock-art images, "influencer content," and website widgets. Be aware that the use of Third-Party Materials may be subject to additional fees and Partner Policies (as defined in Section 6 below). In some instances, we will acquire the licenses needed for the use of Third-Party Materials on your behalf. In others, you will need to obtain a such licenses directly from the Third-Party Material's provider. Your company representative will notify you of any Third-Party Materials to be used in the Promotional Materials if such use could impact your rights in the final Promotional Materials or your obligations to the Company or any third party.

E. Company Materials. We retain all rights, title and interest in and to any intellectual property created or licensed by the Company which was NOT created specifically for you as part of the Services (the "**Company Materials**"). If any Company Materials are incorporated into the Promotional Materials, we hereby grant you a non-exclusive, perpetual, fully-paid, royalty-free, irrevocable and world-wide licenses to use the Company Materials as necessary for your full use of the Promotional Materials, including the right to reproduce, make derivative works from, distribute, publicly perform, and publicly display (in any form or medium, whether now known or later developed) the Company Materials as a component of the Promotional Materials.

**3. WORKING TOGETHER**

A. Best Efforts. We will use our best efforts to ensure that your campaign is successful. To drive campaign success and relevancy, we may sometimes re-allocate spending between the Services in your Contract. We will NOT make any changes to the Services that could result in additional fees, obligations or liabilities for you without your written approval (email accepted). All Services will be performed with reasonable care and skill in accordance with industry standards and will conform in all material respects to the Contract and any specification documents we provide. We will use our best efforts to ensure that your campaigns meet any applicable performance metrics stated in the Contract ("**Metrics**"). We are only responsible for Metrics that are captured in the Contract in writing. If we fail to deliver to the Metrics specified in the Contract, you may choose to (i) extend the term of the Contract until the Metrics are met; (ii) work with us to develop a new

approach and adjust the Contract accordingly; or (iii) terminate the underperforming Services in your Contract and receive a prorated refund of the fees commensurate to the underperformance. These are the only remedies available to you if we fail to meet the Metrics specified in your Contract.

B. Client Input. You are responsible for providing us with any Client Materials, Third-Party Materials, feedback, instructions, technical information and other resources and support that we reasonably request from you to facilitate the Services ("**Client Input**"). You are responsible for ensuring that your Client Input is accurate, complete, and provided in time for us to meet any delivery dates or milestones. We are not responsible for delays, errors or issues caused by your failure to provide us with complete, accurate, and timely Client Input. Be aware that delays or errors in your Client Input could impact the price or performance timelines of certain Services in your Contract. OUR ACCEPTANCE OR USE OF YOUR CLIENT INPUT DOES NOT SERVE AS A GUARANTEE THAT SUCH CLIENT INPUT CONFORMS WITH APPLICABLE LAWS, RULES, REGULATIONS OR ANY PARTNER POLICIES (AS DEFINED IN SECTION 6 BELOW).

C. Timing. Any "**Target Start Dates**" in your Contract are intended as an estimate; they are not a binding commitment unless expressly stated. Actual start dates may vary based on a variety of factors. We are not responsible for delays in performance caused by factors beyond our control, including platform unavailability, network errors, or the technical issues of our Partners (as defined in Section 6 below). We will, however, work with you to ensure that the Services are performed as soon as reasonably possible after such issues are resolved. Your Company representative will communicate with you regarding the exact timing for delivery of Services.

D. Change Requests. If you want to make changes to your Contract, you must make a written request (email accepted) to your Company representative (a "**Change Request**"). We will use our best efforts to comply with a reasonable Change Request within thirty (30) days of receipt. BE AWARE THAT A CHANGE REQUEST MAY IMPACT THE FEES, TARGET START DATES OR EFFECTIVENESS OF SERVICES IN YOUR CONTRACT. You should ask your Company representative how your Change Request might affect your obligations or the overall success of your campaign. If you choose to proceed with your Change Request, you waive all claims against us for failure to make best efforts or failure to achieve Metrics relating to the impacted Services. BE AWARE THAT CERTAIN SERVICES MAY BE SUBJECT TO MINIMUM COMMITMENTS IN DURATION, VOLUME OR SPEND, AND YOU WILL REMAIN RESPONSIBLE FOR THE MINIMUM COMMITMENT VALUE OF SUCH SERVICES EVEN IF YOU ELECT TO CANCEL THE SERVICE OR REDUCE ITS VOLUME OR DURATION.

E. Errors. If we commit a material error when performing the Services, we will make a good faith effort to correct it. This may include reperforming the impacted Services, offering you a credit for additional services, or providing you a pro-rata refund based on the portion of the Service impacted by the error. We are NOT responsible for errors caused by factors beyond our control, including the errors of our Partners (as defined in Section 6 below) or errors in your Client Input.

F. No Guarantees. We do not guarantee any level of impressions, views, clicks, likes or engagement unless it is expressly stated as a Metric in your Contract. WE DO NOT GUARANTEE ANY SPECIFIC OUTCOMES FROM THE SERVICE EXCEPT FOR THE METRICS SPECIFIED IN THE CONTRACT. We do not guarantee that your Promotional Materials will appear in any specific position on any search engine, third-party website/app, or social media platform. We do not guarantee any increase in sales revenue associated with the Services.

**4. PAYMENT TERMS**

A. Invoices. You will be invoiced monthly and all payments are due net thirty (30) days from the invoice date (the "**Due Date**") unless your Contract says otherwise. You must provide the Company with any information that may be required for invoicing at the time the Contract is signed. You warrant that the invoicing information provided in the Contract is accurate. All invoices must be paid in U.S. dollars, and you are responsible for any applicable taxes. If there is a good-faith dispute over any part of your invoice, you agree to pay the undisputed portion in full by the Due Date and to work cooperatively with the Company to negotiate a resolution for the disputed amount.

B. Effect of Non-Payment. An account not paid in full on or before the Due Date will be deemed past due. Past due balances on any invoice will accrue the lesser of one and a half percent (1.5%) interest per month or the maximum amount allowed by law. If you do not pay your invoices by the Due Date, we may suspend the Services by giving you five (5) days' written notice (including via email). If your invoice remains unpaid fifteen (15) days after the Due Date, we may terminate your Contract immediately upon written notice (email accepted). If it is necessary to refer your account to collections, any fees and court costs associated with collection will be added to your outstanding balance due to the Company.

C. Personal Guarantee. In consideration of the Services contemplated in the Contract, and in further consideration of the credit that Company may extend the Client in performance of the Services, the individual signing the Contract on behalf of the Client (the "**Guarantor**") guarantees and agrees to pay to the Company any and all debts of any nature incurred by the Client. This guarantee shall be a continuing, unconditional, and irrevocable guarantee to repay and indemnify such indebtedness of Client. Guarantor agrees that all rights, remedies, and recourses afforded to the Company by reason of this personal guarantee or otherwise are separate and cumulative and may be pursued separately, successively, or concurrently. The Company's rights under this guarantee are nonexclusive and shall in no way limit or prejudice any other legal or equitable right, remedy, or recourse that the Company may have. Guarantor hereby waives notice of default or non-payment, and the Company may modify or renew the Contract herby guaranteed without notice or consent of the Guarantor. The Company reserves the right to grant any extension of time to the Client or make any compromise or release and discharge with the Client; such actions will not release the Guarantor except as expressly agreed by the Company in writing. This guarantee may be assigned by Company to any person or entity taking assignment of the underlying debt, without notice to Guarantor, and shall be fully enforceable by said assignee. Guarantor further agrees to pay all costs, interest, and reasonable attorney's fees incurred by Company in collecting any amounts hereby guaranteed. This guaranty shall be enforceable as to all of Client's debts, liabilities and obligations incurred, despite Client's bankruptcy and discharge and despite adjustment of such debts, liabilities and obligations via solvency proceedings or pursuant to some other compromise with creditors. If any portion of this guarantee provision is construed by a court of competent jurisdiction to be unlawful or unenforceable, the offending provision shall be reformed to affect the clear intention of the parties.

**5. TERM AND TERMINATION**

A Term and Expiration. This Agreement is effective on the date the Contract is signed by both parties and expires as stated in the Contract. If no expiration date is provided in the Contract, the Contract will automatically renew on a month-to-month basis.

B. Termination. Unless the Contract says otherwise, either party may terminate the Contract at any time and for any reason upon thirty (30) days' written notice to the other party (a "**Termination for Convenience**"). Additionally, either party may terminate the Contract (i) immediately if the other party becomes insolvent or declares bankruptcy; or (ii) for a material breach of these Terms by the other party which is not cured within fifteen (15) days of receiving written notice thereof ("**Termination for Cause**"). A termination by the Company for non-payment is considered a Termination for Cause. Finally, the Company may terminate this Agreement immediately and without penalty upon written notice to the Client if the Client has materially breached a provision of this agreement for which there is no adequate cure, or if the Company reasonably believes that continuing to provide the Services could expose the Company, Client or any third party to a serious risk of harm (a **"Special Termination"**).

C. Effect of Termination. Upon termination of the Agreement for any reason, the Client must pay the Company all fees outstanding for Services performed prior to the termination date. In a Termination for Convenience by either party, the Company will provide you with a pro-rata refund of any fees paid in advance for Services not-yet rendered (less any minimum commitments). BE AWARE THAT CERTAIN SERVICES REQUIRE A MINIMUM COMMITMENT IN DURATION OR SPEND; YOU WILL REMAIN RESPONSIBLE FOR THE FULL VALUE OF THE MINIMUM COMMITMENT FOR SUCH SERVICES EVEN IF YOU TERMINATE YOUR CONTRACT. If the Company initiates a Termination for Cause or a Special Termination based on your material breach of these Terms, you may be required to pay liquidated damages equal to the total fees stated in the Contract.

**6. THIRD PARTY PARTNERS**

A. Third-Party Partners. Any third-party whose intellectual property is used to fulfil the Services in the Contract is known as a "**Partner**." Our Partners include software platforms, ad networks, search engines, social media platforms, websites and apps, creative agencies, and the third-party channels and distribution networks that are used to publish, display and distribute your Promotional Materials. You hereby grant us the authority to act as your limited agent and to enter binding agreements with our Partners on your behalf *solely* as necessary to provide the Services in your Contract.

B. Partner Policies. You agree to read and comply with any applicable Partner's then-existing terms of use, terms of service, end user license agreements, terms and conditions, privacy policies, community standards, or other requirements and specifications (their **"Partner Policies"**). These Partner Policies may change over time, and you are solely responsible for keeping track of such changes and complying with them. You understand and agree that, in some cases, you may be directly liable to a Partner for your violation of its applicable Partner Policies; this may be in addition to your potential liabilities to the Company under this Agreement.

C. Disclaimer. WE EXPRESSLY DISCLAIM ALL LIABILITY FOR THE SELECTION OR RETENTION OF ANY PARTNERS IN CONNECTION WITH THIS AGREEMENT AND FOR THEIR ACTS, ERRORS, OR OMISSIONS.

**7. GRANT OF RIGHTS**

A. Grant of Rights. The Client hereby grants the Company all such limited rights as are necessary for the Company to perform the Services specified in the Contract and comply with the Client's express instructions. This includes the limited right to:

(i) use, copy, display, distribute, and/or publish the Client's logo and branding elements;
(ii) use, copy, adapt, reformat, recompile, manipulate, distribute, transmit, and/or modify any part of the Promotional Materials for public performance, public display, and distribution;
(iii) access, index, cache, and display the website(s) to which the Promotional Materials link, or any portion thereof, by any means, including web spiders and/or crawlers;
(iv) create and display copies of any text, images, graphics, audio, or video on the websites on which the Promotional Material exists or to which the Promotional Materials links; and
(v) distribute the Promotional Materials to our Partners for publication and display via the Partner distribution network(s) as specified in the Contract;

B. Client Account Access. Certain Services may require the Company to access and use the Client's accounts on a Partner's platform (the "**Client Account(s)**"). For example, we may need access to your social media accounts to deliver on a social media campaign. We will access and use your Client Accounts solely to provide the Services or comply with your express instructions. We will keep your Client Account login information confidential. You retain all rights in and to your Client Accounts, but you grant the Company a limited right to use your Client Accounts to provide the Services and to otherwise comply with your instructions. You agree to provide the Company with all logon credentials, IP addresses, and other information necessary for the Company to access, configure, and manage your Client Accounts as contemplated by the Contract. You may disable our access to your Client Accounts at any time, but you understand that this may make it impossible for us to deliver certain Services, and you waive any associated claims against us for non-performance. You are solely responsible for changing or updating the login information for your Client Accounts at the end of your Contract. THE COMPANY IS NOT RESPONSIBLE FOR ACTIONS TAKEN IN A CLIENT ACCOUNT BY THE CLIENT, CLIENT'S AGENTS OR REPRESENTATIVES, OR ANY THIRD PARTY. WE ARE NOT RESPONSIBLE FOR ACTIONS WE TAKE IN YOUR ACCOUNT AT YOUR EXPRESS INSTRUCTION.

**8. CONFIDENTIALITY**

A. Confidential Information. Over the course of the relationship, each party (in such capacity, the "**Receiving Party**") may have access to certain Confidential Information of the other party (in such capacity, the "**Disclosing Party**"). "**Confidential Information**" means any information disclosed by the Disclosing Party to the Receiving Party that derives value from not being generally known to the public and which the Receiving party knows, or reasonably should know, to be confidential or proprietary (based on formal designation orally or in writing or based on the nature of the information and the context of disclosure). Confidential Information may include: (i) customer lists, prospect lists, existing agreements with vendors and business partners, and pricing models; (ii) marketing, sales, financial and other business information, data and plans; and (iii) research and development information, formulas, methods, processes, and designs. Confidential Information does not include information that (a) is now or later becomes generally known to the public through no fault of the Receiving Party; (b) the Receiving Party can demonstrate was in its possession prior to its receipt thereof from the Disclosing Party; (c) is lawfully received from a third party without breach of agreement or obligation of trust; (d) is independently developed by or for the Receiving Party without access to the Disclosing Party's Confidential Information, as shown by the Receiving Party's records; or (e) the Disclosing Party has authorized the Receiving Party to disclose, as evidenced in writing.

B. Use, Care and Return/Deletion of Confidential Information. Confidential Information shall only be used for the purposes permitted under this Agreement. The Receiving Party shall protect the Confidential Information of the Disclosing Party from unauthorized access, use or disclosure using the same standards of care as it applies to its own Confidential Information of a similar nature (but in no event less than a reasonable degree of care). The Receiving Party will ensure that Confidential Information is only shared with those employees and agents who have a need to know and who have agreed to keep such information confidential. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information in response to a valid order by a court or other governmental body, or as otherwise required by law, or as necessary to establish the rights of either party under this Agreement. At the end of the Agreement, the Receiving Party will return or destroy the Disclosing Party's Confidential Information, except that the Receiving Party may retain such limited copies as may be required for Bonafede audit, compliance or legal purposes. The obligations of confidentiality will survive the termination or expiration of

this Agreement for three (3) years, except that obligations of confidentiality for any trade secret shall remain in place for so long as such information qualifies as a trade secret under U.S. law.

**9. CLIENT DATA**

A. Your Data. Any data that you or your representatives provide to the Company to facilitate the Services (any "**Client Data**") belongs solely to you, and we will use it solely to provide the Services. Client Data may include data transmitted via API from your computer systems, information you supply about your customers, prospects, and website visitors (including customer names, emails and other personally identifiable information), and similar data that we may collect and use on your behalf, where authorized. Client Data that qualifies as Confidential Information will be treated as confidential by the Company.

B. Required Notices and Consents. You represent, warrant, and covenant (i) that you have obtained all necessary authorizations, consents, releases, and permissions to permit the Company and its Partners to collect and/or use Client Data in performance of the Services, and (ii) that you have provided (and will continue to provide) appropriate notice to permit such collection and/or use. WE CANNOT OFFER YOU ADVICE ON YOUR NOTICE AND CONSENT PRACTICES. YOU ARE SOLELY RESPONSIBLE FOR PROVIDING LEGALLY ADEQUATE NOTICE OF YOUR DATA COLLECTION AND USE PRACTICES AND FOR OBTAINING VALID CONSENT WHERE REQUIRED BY LAW OR SELF-REGULATORY GUIDELINES. This may include (without limitation) providing a conspicuously posted, legally complaint privacy policy on your website (as well as any necessary cookie notices and opt-in/opt-out methods), giving callers notice of your call recording practices, and obtaining consent for direct marketing from your website visitors and customers. You are solely responsible for responding to any requests by any individual relating to the access, deletion, correction or transportation of their data. You are solely responsible for notifying us if any individual changes or revokes his or her authorization, consent, release, or permission to the collection, use or disclosure of his or her information if such changes may affect our performance of the Services.

C. Compliance with Law. The Client and Company each agree to use Client Data in compliance with all applicable laws, rules and regulations, including the CAN-SPAM Act, the Telephone Consumer Protection Act, the Gramm Leach Bliley Act, the Children's Online Privacy Protection Act, the California Online Privacy Protection Act, and the California Consumer Privacy Act. WE CANNOT COMMENT ON THE APPLICABILITY OR REQUIREMENTS OF ANY DATA PROTECTION OR PRIVACY LAWS AS IT RELATES TO YOUR BUSINESS. YOU SHOULD CONSULT YOUR ATTORNEY ON ALL SUCH MATTERS.

**10. ADDITIONAL WARRANTIES; DISCLAIMERS**

A. Mutual Warranties. In addition to the other warranties found in this Agreement, each party represents and warrants: (i) that it is a legal entity duly organized, validly existing and in good standing with all corporate power and authority needed to execute, deliver and perform its obligations hereunder; (ii) that its performance of its obligations under this Agreement will not knowingly violate any other agreement between it and any third party; and (iii) that its performance of its obligations under this Agreement will not violate any applicable law, rule, or regulation.

B. Client Warranties. In addition to the other warranties found in this Agreement, the Client represents and warrants: (i) that the Client is duly licensed and authorized to sell the products and services identified in the Promotional Materials; (ii) that the Client does not market products or services that are illegal nor illicit, sexual, or otherwise offensive in nature, or which are targeted at children under the age of 13; (iii) that the Promotional Materials contain any disclosures required by applicable laws, regulations and industry guidelines; and (iv) that the Promotional Materials do not contain statements that are false, misleading or deceptive.

C. Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. ALL SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." THE COMPANY AND ITS PARTNERS AND SERVICE PROVIDERS SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO CLIENT OR ANY OTHER PERSON WITH RESPECT TO ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE CLIENT MATERIALS OR THE FAILURE TO DISPLAY ANY PROMOTIONAL MATERIALS ON THE DISTRIBUTION NETWORKS OPERATED BY OUR PARTNERS WHERE SUCH FAILURE IS BEYOND THE COMPANY'S CONTROL. THE COMPANY DOES NOT REPRESENT OR WARRANT THAT ANY SERVICES WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR, AND THE COMPANY WILL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES INCURRED BY CLIENT RELATING TO THE UNAVAILABILITY OF THE INTERNET OR WEBSITE(S) ON WHICH PROMOTIONAL MATERIALS ARE PUBLISHED. UNLESS OTHERWISE SPECIFIED IN THE CONTRACT, THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES RELATING TO THE RESULTS OF SERVICES, INCLUDING WITHOUT LIMITATION, THE NUMBER OF IMPRESSIONS OR CLICK-THROUGHS, LEADS AND ANY PROMOTIONAL EFFECT OR RETURN ON INVESTMENT. THE CLIENT ACKNOWLEDGES THAT IT HAS

NOT RELIED ON ANY STATEMENT, PROMISE OR REPRESENTATION MADE OR GIVEN BY OR ON BEHALF OF THE COMPANY WHICH IS NOT SET OUT IN THE AGREEMENT.

**11. INDEMNIFICATTION; LIMITATION OF LIABILITY**

A. Company Obligations. The Company will defend, indemnify and hold harmless the Client, its parent company, officers, directors, employees, and agents (each a "**Client Indemnitee"**) from and against all third-party claims, legal actions, damages, losses, fines, settlements or other liabilities (including reasonable attorney's fees or disbursements) ("**Claims**") arising out of or related to the Company's (i) violation of any third-party's intellectual property rights; (ii) reckless violation of any applicable law or regulation, including applicable data privacy laws; and (ii) gross negligence or willful misconduct. These obligations shall not apply to the extent that the Claim(s) result from the Client's breach of this Agreement.

B. Client Obligations. The Client will defend, indemnify and hold harmless the Company, its parent company, officers, directors, employees, agents, and Partners (each, a "**Company Indemnitee**") from and against all Claims arising out of or related to the Client Input, the Client Materials, or Client's actual or alleged (i) material breach of this Agreement; (ii) violation of any third-party's rights, including rights of privacy or intellectual property rights; (iii) violation of any applicable law or regulation, including applicable data privacy laws; and (iv) gross negligence or willful misconduct. These obligations shall not apply to the extent that the Claim(s) result from Company's breach of this Agreement. This provision shall not apply where prohibited by applicable state laws or local ordinances.

C**.** Limitation of Liability. EXCEPT FOR THE CLIENT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.B. ABOVE, OR EITHER PARTY'S BREACH OF CONFIDENTIALITY OR WILLFUL MISCONDUCT : (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENTAND (ii) THE TOTAL LIABILITY OF EITHER PARTY IN CONNECTION WITH THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY, SHALL BE STRICTLY LIMITED TO THE AMOUNT PAID OR PAYABLE BY THE CLIENT TO THE COMPANY UNDER THE CONTRACT IN THE 12 MONTHS PRECEDING THE CLAIM.

**12. GENERAL TERMS**

A. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes any prior written or oral agreement. Amendments to this Agreement must be in writing and signed by both parties. Notwithstanding the foregoing, the Company reserves the right to make unilateral revisions to this Agreement upon ten (10) days' advance written notice to the Client ONLY IN THE EVENT THAT THE COMPANY REASONABLY DETERMINES THAT SUCH CHANGES ARE NECESSARY TO COMPLY WITH APPLICABLE LAWS, REGULATIONS OR PARTNER POLICIES ("**Required Revisions**"). If you do not agree to any Required Revisions, you may initiate a Termination for Convenience at any time during the ten (10) day notice period, and such termination will take effect immediately upon the Company's receipt of your written notice. By continuing to receive the Services after the ten (10) day notice period, you are giving your consent to the Required Revisions.

B. No Assignment. Neither party may assign this Agreement to another party, person or entity, without the written consent of the other party, except that the Company may assign this Agreement without the Client's consent pursuant to the sale, merger or other consolidation of (i) substantially all of its assets, or (ii) the operating divisions which are responsible for fulfilling the obligations of this Agreement. Notwithstanding the foregoing, Client's written consent will still be required where the assignee is a direct competitor of Client. All terms and conditions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted transferees, successors, and assigns.

C. Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

D. Survival. Any provision of this Agreement which is intended by its nature to survive termination or expiration, shall survive such termination or expiration. This includes, without limitation, each party's representations and warranties, obligations of confidentiality and indemnification, and the Clients payment obligation.

E. Subcontractors. The Company has the right to employ subcontractors to aid in the performance of Services under this Agreement, provided that the Company remains liable for any subcontractors' breach of this Agreement in association with such performance.

F. Non-Solicitation. During the Term of this Agreement and for a period of one (1) year following any termination or

expiration thereof, neither party shall knowingly solicit nor encourage to leave the other party's employment any employee, consultant, or contractors without the other party's written consent. The terms "solicit" and "encourage" do not include searches for employees through general recruitment efforts or other means not focused on persons employed by the other party.

G. No Exclusivity; Agency Non-Compete. Nothing herein is intended to create an exclusive relationship between the parties, and the Company shall be free to market and provide its services to other Clients and potential clients at its discretion, both during and after this Agreement. Notwithstanding the foregoing, if you are an Agency procuring services for an Advertiser you support, the Company agrees that it shall not knowingly solicit such Advertiser during the Contract term and for a period of one (1) year thereafter without your written consent.

H. Force Majeure. The Company will not be liable for failure to perform its obligations hereunder if such failure is due to any act of God, acts of a public enemy or government authority, denial of service attacks, virus or other malicious software attacks or infections that cannot reasonable be foreseen, labor dispute, epidemic, war, civil disobedience or riot, sudden emergence of prehistoric radioactive kaiju, or other occurrences beyond its reasonable control.

I. No Waiver. The failure of the Company to enforce or to exercise any right pursuant to this Agreement at any time or for any period of time does not constitute, and shall not be construed as, a waiver of such terms or rights and shall in no way affect its right to later enforce or exercise it.

J. Publicity. Unless expressly prohibited by the Client, the Company may identify the Client as a customer (by name or trademark) on its website(s) and in its marketing materials. Company will comply with any brand standards and guidelines that the Client supplies. Any other use of the Client's name or trademark will require the Client's written approval. Unless expressly prohibited by the Client, the Company may publish *pseudonymous* case studies about the Services performed for the Client and the outcomes of those Services, so long as the case studies do not identify the Client by name or trademark and do not disclose any Confidential Information of the Client.

K. Feedback and Suggestions. You are not required to offer us feedback or suggestions regarding our services, and we are not required to use any feedback or suggestions that you may choose to supply. If you choose to supply us with feedback or suggestions, you are not entitled to any compensation or credit for your ideas, and you grant us the unrestricted right to use such feedback as we see fit.

L. Interpretation. The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Agreement. The terms "will" and "shall" may be used interchangeably. The phrases "include(s)" or "including" shall mean "incudes without limitation" and "including but not limited to." The phrases "such as" or "for example" indicate a non-exclusive list. The words "you" or "your" shall be interpreted as referencing the Client, Agency, and/or Advertiser, while the words "we" "our" or "us" shall be interpreted as referencing the Company.

M. Governing Law. This Agreement governed by the laws of the state of Delaware without regard to conflict of law principles.

N. State of Incorporation. *excelerate* is a division of McClatchy Shared Services, Inc., a Florida Corporation.