

Marketing Partnership Terms of Services

BE Marketing, LLC

Last updated: 7/3/23

THESE TERMS OF SERVICE CONTAIN IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ THEM CAREFULLY. THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

These Terms of Service, including Client's Order (defined below), represent and constitute the entire agreement (this "Agreement") between BE Marketing, LLC d/b/a beMarketing ("beMarketing") and you ("Client") and is effective as of the date of execution of Client's Order. beMarketing and the Client are referred to in this Agreement collectively as the "Parties" and individually as a "Party."

Agreement

1. Definitions.

1.1. "beMarketing-Furnished Material" means, collectively: (i) the beMarketing Platform and all contents, materials, elements, features and functionalities thereof, but excluding Client-Furnished Material contained therein; (ii) all beMarketing names, marks, logos, designs and brand images; (iii) all links and advertisements provided by beMarketing; (iv) all beMarketing Systems and all hardware, software, tools, technologies, processes, methods, techniques and know-how provided by beMarketing (whether for use by beMarketing or Client or otherwise) in the rendering of the Services; and (v) all results, work products and deliverables of the Services (including, without limitation, all Client Properties source code, object code, HTML files, Java files, data files, scripts, programs, templates, user interface designs, themes, page layouts and look and feel, and documentation created by beMarketing), but excluding Client-Furnished Material contained therein.

1.2. "beMarketing Platform" means beMarketing's platform found at beMarketing.com

1.3. "beMarketing Systems" means all computer servers, networks and systems owned, controlled or operated by beMarketing and/or its corporate affiliates in connection with the rendering of the Services, including, without limitation, those associated with the beMarketing Platform.

1.4. "Client-Furnished Material" means, collectively: (i) the domain name for the Client Website; (ii) any names, passwords and other account access information for any of the Social Media Sites and Location-Based Sites created by or for Client; (iii) all information, data, content and material furnished by Client for storage, use, reproduction, posting, display, exhibition, transmission, publication and/or distribution (as the case may be) whether on or via the Client Properties, the beMarketing Systems, or otherwise, including, without limitation, names, marks, logos, designs, slogans, text, writings, publications, artwork, graphics, images, photos, animations, videos, audios, links, software and social media plug-ins; and (iv) all hardware, software and other goods and services procured and maintained by Client pursuant to Section 2.14 of this Agreement.

1.5. "Client Properties" means, collectively, the Client Website, the Social Media Sites and Location Based Sites (as applicable).

1.6. "Client Website" means the consumer-facing website of Client as designed (whether by Client using the beMarketing design tools or otherwise), constructed and hosted by beMarketing pursuant to this Agreement.

1.7. "Excused Outage" means any outage, unavailability, interruption, delay or degradation of the Services or the Client Website resulting from or caused by any of the following: (i) scheduled downtime, maintenance or repair; (ii) any act or omission by Client or anyone acting under its authority or on its behalf; (iii) any Client Furnished Material; (iv) any User-Generated Material; or (v) Force Majeure.

1.8. "Force Majeure" means a cause or event that is beyond the reasonable control of beMarketing and could not reasonably have been foreseen or avoided, including, without limitation, third-party network or system outage, hacking, virus attack or other form of sabotage, Acts of God, acts of government, strikes, lockouts, riots, insurrection, civil commotion, war and terrorist attacks.

1.9. "IP" means any and all forms of intellectual property, including, without limitation, patent, trade secret, copyright and trademark.

1.10. "Location-Based Sites" means the local business listing for Client on certain leading location-based websites selected by beMarketing in its sole discretion. The Location-Based Sites may (but are not required to) include Google, Bing, Yahoo, MapQuest and Yelp.

1.11. "Order" means Client's order to subscribe for the Services.

1.12. "Social Media Sites" means certain social media sites selected by beMarketing at its sole discretion. The Social Media Sites may include, without limitation, Facebook, LinkedIn, TikTok, Twitter and YouTube.

1.13. "User" means any individual who visits or uses the Client Website but excludes each of the Parties and anyone who uses the Client Website on behalf of a Party.

1.14. "User-Generated Material" means any content or material uploaded, posted, submitted or transmitted by a User on or via the Client Website.

2. Services.

2.1 Services. Subject to the terms and conditions of this Agreement, beMarketing will provide services set forth on Client's Order (the "Services"). beMarketing reserves the right to add Services or modify and replace with a substantially-similar Service from time-to-time in its sole discretion. beMarketing agrees to use commercially reasonable efforts to ensure that during the Term, the Client Website will be operational and accessible to Users 99.9% of the time, except during any Excused Outage.

2.2 Account Information. Following the effectiveness of this Agreement, beMarketing shall issue account credentials (e.g., user login ID and password) to certain employees and independent contractors of Client as agreed to from time to time by the Parties (each, a "Designated Employee") in order for such Designated Employees to be able to access the beMarketing Platform. Each Designated Employee will only be permitted to access the beMarketing Platform using his or her account credentials that have been assigned to him or her. No Designated Employee may disclose his or her credentials to any third party (including any other employee or independent contractors of Client), and Client shall be responsible for any access to the beMarketing Platform by its Designated Employees or by third parties using the account credentials of any of Client's Designated Employees. Client shall promptly notify beMarketing if Client believes a Designated Employee's account credentials have been compromised.

2.3 Subcontractors. Client acknowledges and agrees that beMarketing may, in its sole discretion, use one or more third-party contractors (each, a "Subcontractor") to provide some portions of the Services and/or other services related to the operations of the beMarketing Platform and/or the Client Properties, which may include, without limitation, data processing and storage, data security, technical support, purchase and payment processing, order fulfillment, and other e-commerce related functions.

2.4 Feedback. If Client provides beMarketing with any feedback or suggestions regarding the Services ("Feedback"), Client hereby assigns to beMarketing all rights in and to such Feedback and agrees that beMarketing shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. beMarketing will treat any Feedback Client provides to beMarketing as non-confidential and non-proprietary. Client agrees that it will not submit to beMarketing any information or ideas that it considers to be confidential or proprietary.

2.5 Reservation of Right. Notwithstanding anything herein to the contrary, Client acknowledges and agrees that beMarketing shall have the absolute right, at any time and with or without notice to Client, to (i) suspend, disable, block, restrict or limit access to the Client Website or any portion thereof and/or (ii) take down and remove any content or material (including, without limitation, any Client-Furnished Material, any User-Generated Material, or any beMarketing-Furnished Material) from the Client Website, if doing so, in beMarketing's sole judgment, is necessary or advisable in order to comply with any applicable law or regulation or to protect beMarketing or its corporate affiliates from actual or potential claims or liabilities, or for any content or material which beMarketing determines is offensive (including any pornographic images, any foul language, disparaging remarks, references to illegal substances, derogatory remarks regarding the religion, sexuality, politics, appearances or other characteristics or beliefs of any other person or entity, etc.), or infringes, misappropriates or violates any IP or other right of any person or entity.

2.6 beMarketing-Furnished Material. Subject to the terms and conditions of this Agreement, beMarketing hereby grants to Client a non-exclusive, non-transferable, non-sublicensable, limited right and license to use beMarketing-Furnished Material solely for the purposes of receiving the Services from beMarketing and operating the Client Properties during the Term.

2.7 Client-Furnished Material. Subject to the terms and conditions of this Agreement, Client hereby grants to beMarketing a non-exclusive, non-transferable, non-sublicensable (except to a Subcontractor), limited right and license to use, reproduce, post, display, exhibit, transmit, publish and/or distribute (as the case may be) Client-Furnished Material solely for the purposes of providing the Services to Client during the Term in connection with the Client Properties. Client represents and warrants that: (i) it has the right to furnish and authorize use of Client Furnished Material by beMarketing in accordance with this Agreement and (ii) no Client-Furnished Material will infringe upon or violate any right of any third party.

2.8 Domain Names. Client shall, promptly after the Effective Date, give beMarketing full access to the domain name account and authorize beMarketing to maintain and manage the account during the Term. Upon the expiration or termination of this Agreement, beMarketing shall turn over the control of the Client Website domain name to Client.

2.9 Legal Notices. Client agrees to maintain terms of use and a privacy policy on the Client Website that complies with the terms and conditions of this Agreement and applicable law and regulations.

2.10 User Personal Information. To the extent Users can register, open an account, make a purchase, or otherwise disclose their personal information (i.e. information that is personally identifiable of a User, which may include name, email address, phone number, mailing address, date/year of birth, and credit card or other payment account information) (collectively "User Personal Information") on the Client Website, the Parties acknowledge and agree that all User Personal Information collected on or from the Client Website shall be owned by Client and may be used by Client in accordance with the Client's privacy policy. Client acknowledges and agrees that: (i) it shall assume full responsibility for the safeguarding of the security of all User Personal Information in its possession or control and (ii) it shall comply with its privacy policy all applicable laws and regulations pertaining to the privacy or security of User Personal Information, and shall cause all those acting under its authority or on its behalf to do the same.

2.11 User Aggregate Data. Client acknowledges and agrees that beMarketing may (whether directly or through one or more Subcontractors) collect and derive aggregate data (i.e., information that does not identify any User individually, such as site traffic data and anonymous demographic information about Users) from the Client Properties, and that all such aggregate data shall become the property of beMarketing and may be freely used by beMarketing and its corporate affiliates for any and all lawful purposes.

2.12 Restrictions on Use. Client (including all those acting under its authority or on its behalf) may not use the Services or the Client Properties or any beMarketing-Furnished Material, other than for Client's own legitimate

and lawful business purposes and in a manner that complies with this Agreement and all applicable laws and regulations. Without limiting the generality of the foregoing, Client (including all those acting under its authority or on its behalf) shall not: (i) use any of the Services or the Client Properties or any beMarketing-Furnished Material to engage in fraudulent, deceptive or misleading activities or practices; (ii) use any of the Services or the Client

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Properties or any beMarketing-Furnished Material to engage in infringement, misappropriation or violation of any IP or other rights of any person or entity; (iii) use any of the Services or the Client Properties or any beMarketing-Furnished Material to engage in spam or transmission or distribution of unsolicited commercial messages in violation of applicable laws or regulations; (iv) use or handle any User Personal Information in violation of the published Privacy Policy for the Client Website or any applicable law or regulation pertaining to the privacy or security of User Personal Information; (v) use any of the Services or the Client Properties or any beMarketing-Furnished Material to offer or promote illegal, unlawful, violent, harassing, discriminatory, derogatory, defamatory, libelous, pornographic, obscene, sexual, vulgar, or otherwise objectionable or offensive content or activities; (vi) use any of the Services or the Client Properties or any beMarketing-Furnished Material in violation of U.S. export control laws or regulations; (vii) copy, reproduce, distribute, sell or resell, or prepare derivative works from, any of the Services or the Client Properties or any beMarketing-Furnished Material; (viii) reverse-engineer, decompile or disassemble the Client Properties or any beMarketing-Furnished Material; (ix) alter, modify, remove, deface or otherwise tamper with any beMarketing legal notices that appear on or within the Client Properties or any beMarketing-Furnished Material; (x) use any of the Services to advertise or sell cannabis or cannabis related products; or (xi) solicit, induce, cause or authorize others to do any of the above.

Client acknowledges and agrees that, in the event of any breach or violation of this Section 2.12 by Client or anyone acting under its authority or on its behalf, beMarketing shall be entitled to immediately terminate this Agreement pursuant to Section 4.3(i) of this Agreement.

2.13 Monitoring. Client acknowledges and agrees that beMarketing shall have the right to electronically and remotely monitor Client's use of the Services, the Client Properties and beMarketing-Furnished Material to verify Client's compliance with the terms of this Agreement.

2.14 Hardware. Client shall be solely responsible for procuring and maintaining (including, without limitation, the right to use), at its own expense, all hardware, software, Internet access, network connections, and other goods and services required for Client to access and use the Services and the Client Properties.

2.15 Third-Party Accounts. To the extent that Client is required to provide beMarketing with access to any Social Media Sites, Location-Based Sites, or domain name sites in order for beMarketing to provide the Services, Client shall (a) provide beMarketing with the ability or right to create its own login and passwords on such sites or platforms and (b) not provide to beMarketing any of its login information or passwords.

2.16 CBD and Hemp. To the extent Client provides or requests that beMarketing provide advertising of hemp or CBD related products, Client represents, warrants, and covenants that: (i) Client is located in a state in which it is legal to sell and advertise the products Client will advertise with beMarketing, Client's business complies with that state's laws, including any applicable licensing requirements, and any applicable federal laws, the products Client is selling have been legally produced and distributed and Client is legally authorized to distribute, market, or sell those products under applicable federal and state laws; (ii) the CBD products are derived from industrial hemp grown in compliance with a federal, state, or tribal program in compliance with the Agriculture Improvement Act of 2018 (sometimes called the "2018 Farm Bill") and are properly considered "hemp" as defined in that law; (iii) any advertisements Client provides to beMarketing for publication or included on the Client Website complies with federal and state law, including all restrictions the state places on hemp-CBD-related advertising; (iv) the content of Client's advertisements are not targeted at people under the age of 18 and Client will not attempt to use the Services to target advertisements at people under the age of 18; (v) the content of Client's advertisements does not link hemp CBD to a disease or health related condition nor claim or imply that hemp-CBD is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of any disease or other health condition, nor claim or otherwise imply that hemp-CBD is intended to affect the structure or any function of the body; and (vi) beMarketing has final approval rights on all advertising content and may reject any advertisement, in its sole discretion for any or no reason.

2.17 Ownership. As between the Parties: (i) all beMarketing-Furnished Material and all IP rights associated therewith shall remain the sole property of beMarketing and all use thereof by Client shall inure to the sole benefit of beMarketing and (ii) all Client-Furnished Material and all IP rights associated therewith shall remain the sole property of Client and all uses thereof by beMarketing shall inure to the sole benefit of Client.

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2.18 Client Information. By submitting Client information (including, without limitation, Client's name, address, email, telephone and other contact information, billing and payment information, Passwords and other Client-related information as provided by Client (collectively "Client Account Information") to beMarketing, Client expressly represents and warrants that all Client information submitted is Client's own information and is truthful, current and accurate, and Client further expressly acknowledges and agrees as follows:

(i) beMarketing may collect, store, retain, and use Client Account Information for all purposes related to beMarketing's performance and enforcement of this Agreement, as well as to comply with applicable laws and regulations. Client billing and payment information (e.g. credit card information) will only be used for payment processing and collection purposes related to Client's account with beMarketing and will not be used or stored for any other purposes (except as expressly otherwise stated).

(ii) beMarketing may disclose Client Account Information (including Client billing and payment information, if applicable) to Subcontractors who need to access such information to perform services for beMarketing, the beMarketing Platform and/or the Client Properties; it being understood that beMarketing will require its Subcontractors to limit their use of Client Account Information solely to the purposes for which the information was disclosed by beMarketing, and to maintain the confidentiality, security and integrity of the information and not make any further disclosure to others.

(iii) beMarketing may disclose Client Account Information (including Client billing and payment information, if applicable) to others if doing so is required by law or, in beMarketing's good faith belief, is reasonably necessary to: (1) comply with legal process (including a court order or subpoena); (2) cooperate with law enforcement; (3) enforce this Agreement or the Legal Notices for the Client Properties; (4) respond to an emergency; or (5) protect the rights, property or safety of beMarketing, Users, and/or the public.

(iv) If beMarketing is sold or transferred to, merged with, or acquired by a third party, Client Account Information may be transferred to such a third party as part of the transaction, in which event the privacy policy of such third party may govern further use and disclosure of Client Account Information.

(v) When Client uses the beMarketing Platform, the site servers automatically generate log files that may contain data linked to Client, such as IP addresses, ISP domain names, browser types, operating systems, referring/exit pages, date/time stamps, clickstream data, etc. Also, to the extent Client has enabled "cookies" in its browser, beMarketing may use "cookies" to collect session information about Client's visits and activities on the beMarketing Platform. beMarketing collects and uses log file data and cookie session information for its operational purposes, including for purposes of improving Client experience on the beMarketing Platform, collecting and analyzing traffic and activity data related to the beMarketing Platform, managing Client relations, etc.

(vi) beMarketing may collect and generate aggregate and group information based on Client and others' visits and activities on the beMarketing Platform, or by combining Client-related information with information about beMarketing's other clients. Such aggregate information is anonymous and does not identify clients individually. beMarketing shall be free to use and share with others such aggregate information for market research/analysis, marketing and advertising, and other business purposes.

(vii) beMarketing will use commercially reasonable measures to safeguard Client Account Information, but absolute security cannot be guaranteed. No data transmission over the Internet and no data storage can be 100% secure. Consequently, beMarketing does not warrant or guarantee the security of any information

Client transmits to, from or on the beMarketing Platform. beMarketing will endeavor to notify Client in the event beMarketing becomes aware of a breach or suspected breach of the security of Client Account Information as stored by beMarketing. However, it is expressly understood and agreed that beMarketing shall not be liable for any breach of security of Client Account Information resulting from causes or events that are beyond beMarketing's control, including, without limitation, Client's own act or omission, corruption of storage media, defects in third-party data security products or services, power failures, natural phenomena, riots, acts of vandalism, hacking, sabotage, or terrorism.

2.19 Cookies and Similar Devices. By entering into this Agreement, Client expressly acknowledges and agrees:

(i) The beMarketing Platform may send cookies, which are small pieces of data, to Client's web browser to facilitate Client's use of the beMarketing Platform. Cookies help beMarketing deliver content specific to Client's interests and permit our servers to recall information from Client's prior visits to the beMarketing Platform. beMarketing may use information collected from cookies in conjunction with other information collected from Client. beMarketing does not, however, use cookies to access information on Client's computer or mobile device. Client may choose whether to accept cookies by adjusting the settings of Client's browser. If Client's browser is set to reject cookies, Client may still enter the beMarketing Platform, but Client may not have full access to all areas of the beMarketing Platform.

(ii) The beMarketing Platform may use other industry standard technologies like pixel tags and web beacons to track Client's use of the beMarketing Platform, and may also allow Subcontractors to use these devices on beMarketing's behalf. Pixel tags and web beacons are tiny graphic images placed on certain pages on the beMarketing Platform or in beMarketing emails that allow beMarketing to determine whether Client has performed a specific action. When Clients access these pages or open or click an email, pixel tags and web beacons generate a non-personally identifiable notice of that action. Pixel tags allow beMarketing to measure and improve understanding of visitor traffic and behavior on the beMarketing Platform, as well as to measure beMarketing's promotions and performances. beMarketing may also utilize pixel tags and web beacons provided by others for the same purposes.

2.20 Third-Party Links & Ads. The Services and the beMarketing Platform may contain links to third-party websites and services, and/or display advertisements for third parties (collectively, "Third-Party Links & Ads"). Such Third-Party Links & Ads are not under the control of beMarketing, and beMarketing is not responsible for any Third-Party Links & Ads. beMarketing provides access to these Third-Party Links & Ads only as a convenience to Client, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links & Ads. Client will use all Third-Party Links & Ads at its own risk, and should apply a suitable level of caution and discretion in doing so. When a Client visits any Third-Party Links & Ads, the applicable third party's terms and policies apply, including the third party's privacy and data gathering practices. Client should make whatever investigation it feels necessary or appropriate before proceeding with any transaction in connection with such Third-Party Links & Ads.

2.21 Additional Terms and Conditions Applicable to WP Engine. Client acknowledges and agrees to WP Engine's [Terms of Service](#).

3. Fees and Payment.

3.1 Fees. In consideration for the Services, Client shall pay beMarketing the Fees in the amounts and at the times set forth on the Order to this Agreement commencing on the Effective Date (the "Fees"). All Fees are NON-REFUNDABLE. Client shall reimburse beMarketing, within thirty (30) days of being billed by beMarketing, for any out-of-pocket costs incurred by beMarketing in rendering the Services (the "Miscellaneous Costs"), including, without limitation: (i) the costs of maintaining the domain name for the Client Website; it being understood that where beMarketing offers the first year of domain name registration website free of charge for

certain Service packages, the Client will automatically be charged (and be obligated to reimburse beMarketing) for the costs of renewing and maintaining the domain name registration after the first year; and (ii) if applicable, the costs of providing e-commerce features, customer support services and other solutions (e.g., shopping cart and electronic ordering/purchase processing, dedicated customer support hours and other services).

3.2 Billing and Contact Information. Client shall provide beMarketing with current and accurate billing and contact information and shall promptly notify beMarketing of any change in such information. If the billing or contact information provided by Client is incorrect or incomplete or becomes outdated, beMarketing shall have the right to immediately suspend the Services and access to the Client Properties without any liability to Client, until current and correct billing and contact information is provided by Client. If Client does not provide its updated billing and contact information within a reasonable time period after beMarketing makes a request, beMarketing shall have the right to terminate this Agreement with immediate effect with or without notice to Client, upon which

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beMarketing will, without any liability to Client, cease all of the Services, permanently deactivate and terminate the Client Properties, and permanently delete the Client account and all Client-Furnished Material from the beMarketing Platform and the beMarketing Systems.

3.3 Timely Payment. Client acknowledges and agrees that: (i) timely payment of the Fee for each billing period is essential to the continuation of the Services and the Client Properties; (ii) Client's failure to pay the Fee on time for a given billing period shall entitle beMarketing to immediately suspend the Services and access to the Client Properties without any liability to Client; and (iii) if Client's account is delinquent for thirty (30) days or more, then in addition to its other rights and remedies, beMarketing shall have the right to terminate this Agreement with immediate effect upon notice to Client, upon which beMarketing will, without any liability to Client, cease all of the Services, permanently deactivate and terminate the Client Properties, and permanently delete the Client account and all Client-Furnished Material from the beMarketing Platform and the beMarketing Systems.

3.4 Taxes. The Parties agree that Client shall pay the full amount of the Fee, exclusive of any sales, use, excise, value-added or other similar taxes, all of which shall be the responsibility of Client.

4. Term and Termination.

4.1 Term. The Initial Term of this Agreement shall commence on the Effective Date and end on the one (1) year anniversary of the Effective Date. Thereafter, the term shall automatically renew on a month-to-month basis on each monthly anniversary of the Effective Date. The Initial Term and any monthly renewal thereafter shall be referred to herein as the "Term."

4.2 Termination by Client. Following the Initial Term, Client may terminate this Agreement upon for any reason upon thirty (30) days prior written notice to beMarketing.

4.3 Termination by beMarketing. beMarketing shall have the right to terminate this Agreement with immediate effect with or without notice to Client as follows: (i) upon a breach of this Agreement by Client (including anyone acting under its authority or on its behalf); (ii) if Client becomes insolvent, files for bankruptcy, or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of creditors, or makes an arrangement pursuant to any bankruptcy law, or if a receiver, liquidator, custodian, trustee or the like is appointed for its business; or (iii) if Client winds down, liquidates, or otherwise ceases or discontinues its business for any reason. Notwithstanding the foregoing, following the Initial Term, beMarketing shall have the right to terminate this Agreement with thirty (30) days prior written notice to Client for any reason or no reason.

4.4 Effect of Termination. Upon any termination of this Agreement: (i) all unpaid and accrued Fees and Miscellaneous Costs amounts (including interest thereon, if any) owed by Client hereunder shall become immediately due and payable to beMarketing; (ii) all rights and licenses granted by each Party to the other Party under this Agreement shall automatically cease and terminate; (iii) beMarketing will cease all of the Services, permanently deactivate and terminate the Client Properties, and permanently delete the Client account and all Client-Furnished Material from the beMarketing Platform and the beMarketing Systems; (iv) Client shall have no further

right or permission to access or use, except for the Client-Furnished Materials: (1) the Client Website, including any templates, designs or look-and-feel contained therein; (2) beMarketing Platform; (3) any of the beMarketing Furnished Material; (4) any of the Services; and (5) any of the beMarketing Systems; (v) to the extent Client is in possession of any beMarketing-Furnished Material (including any copies thereof), Client shall promptly return the same to beMarketing or, if so requested by beMarketing, promptly destroy the same; (vi) to the extent Client is in possession or control of any confidential information of beMarketing, it shall promptly return the same (including all copies thereof) to beMarketing or, if so requested by beMarketing, promptly destroy the same; and (vii) notwithstanding anything herein to the contrary, all of the provisions of Sections 1, 2.4, 2.9, 2.10, 2.11, 2.12, 2.16, 2.17, 2.18, 2.19, 2.20, 2.21, 3, 4.4, 5, 6, 7, 8, and 9 (including all definitions pertaining thereto) of this Agreement shall specifically survive any termination of this Agreement. Once this Agreement has been terminated, (a) Client will no longer be able to receive support or access to the beMarketing Platform; (b) beMarketing will not be able to assist Client with any site migration tasks; and (c) any use of the Client Website may require Client to obtain certain license rights from third parties (i.e., WPEngine). It is your responsibility to maintain offline backups of the Client Website at all times.

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5. Indemnification. Client shall indemnify, defend and hold harmless beMarketing and its corporate affiliates and their respective directors, officers, employees, agents and representatives (collectively “beMarketing Indemnitees”) from and against all third-party claims, demands, actions, suits and proceedings, as well as all associated liabilities, judgments, awards, damages, settlements, penalties, fines, costs and expenses (including, without limitation, attorneys’ fees) (collectively “Third-Party Claims”), which result from or are caused by: (i) use or misuse, storage, or handling of any User Personal Information by Client or anyone acting under its authority or on its behalf; (ii) violation by Client or anyone acting under its authority or on its behalf, of the published Privacy Policy for the Client Website or any applicable law or regulation pertaining to the privacy or security of User Personal Information; (iii) the registration or use of the Client Website Domain Name; (iv) any Client-Furnished Material; (v) use of the Client Properties, or any activity conducted on or via the Client Properties, by Client or anyone acting under its authority or on its behalf; (vi) violation of any applicable law or regulation by Client or anyone acting under its authority or on its behalf; and/or (vii) any breach of this Agreement by Client or anyone acting under its authority or on its behalf.

6. Disclaimers. EXCEPT AS EXPRESSLY OTHERWISE STATED HEREIN, ALL OF THE SERVICES, THE BEMARKETING PLATFORM AND THE CLIENT PROPERTIES ARE PROVIDED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, BEMARKETING HEREBY SPECIFICALLY DISCLAIMS, WITH RESPECT TO THE SERVICES, THE BEMARKETING PLATFORM AND THE CLIENT PROPERTIES, ANY AND ALL (I) IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND NON-INFRINGEMENT, (III) WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE, AND (IV) WARRANTIES THAT THE SERVICES, THE BEMARKETING PLATFORM AND THE CLIENT PROPERTIES WILL BE UNINTERRUPTED, ERROR-FREE AND SECURE.

7. Limitations of Liability.

7.1 No Consequential Damages. IN NO EVENT SHALL BEMARKETING BE LIABLE HEREUNDER TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF BUSINESS OR OPPORTUNITY, OR LOSS OF USE OR DATA, EVEN IF BEMARKETING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

7.2 Maximum Liability. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF BEMARKETING HEREUNDER TO CLIENT, REGARDLESS OF THE FORM OF CLAIM OR ACTION, EXCEED A SUM EQUAL TO THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO BEMARKETING DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ARISING

OF THE RELEVANT CLAIM OR ACTION.

8. Disputes.

8.1 **Governing Law.** This Agreement, including all disputes and controversies between the Parties arising from or connected to this Agreement, shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to its conflict of laws rules.

8.2 Dispute Resolution; Binding Arbitration.

(a) EACH PARTY IS AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT EACH PARTY WOULD HAVE IF SUCH PARTY WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION. ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT, OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE, AND EQUITABLE CLAIMS) BETWEEN THE

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PARTIES ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.

(b) The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the Commercial Arbitration Rules (the “AAA Rules”) then in effect, except as modified by this Section 8.2. The Federal Arbitration Act will govern the interpretation and enforcement of this section. The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or this Agreement are void, voidable, or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction. The parties agree that any required in-person arbitration hearings will occur in or around Naples, Florida, or as otherwise determined by the arbitrator.

(c) Each party agrees to arbitration on an individual basis. In any dispute, NEITHER PARTY WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER, OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. The arbitral tribunal may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

(d) If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

9. Miscellaneous.

9.1 **Publicity.** Neither Party shall issue any press release or public announcement about this Agreement or the relationship of the Parties hereunder unless such press release or announcement is issued jointly by the Parties.

9.2 **Marketing Use of Client’s Name.** Client acknowledges and agrees that, during the Term, beMarketing and its corporate affiliates may mention and use Client’s name in sales, marketing, advertising and promotional materials (including, without limitation, sales/marketing pitches and presentations, and client/customer lists) for the purpose of identifying Client as a customer of beMarketing.

9.3 **Relationship of the Parties.** The relationship of the Parties hereunder is that of independent

contractors. Nothing in this Agreement shall be deemed or construed to constitute an agency, partnership or joint venture between the Parties.

9.4 **No Assignment.** Client may not assign this Agreement, in whole or in part, without the prior written consent of beMarketing.

9.5 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and sent by courier or via e-mail or facsimile.

9.6 **Entire Agreement; Amendments.** This Agreement (including Client's Order) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior understandings, communications and agreements, written or oral, between them with respect thereto. These Terms of Service (excluding, for the avoidance of doubt, Client's Order) may be amended from time to time by beMarketing in beMarketing's sole and absolute discretion. Changes to these Terms of Service will take effect 7 days after beMarketing has posted an initial notification on beMarketing's Platform. Client's Order may not be amended or modified, except by a written instrument executed by both Parties.

9.7 **Severability.** If any provision or any portion of any provision of this Agreement is held to be illegal, invalid or unenforceable, such shall be deemed stricken and deleted from this Agreement to the same extent and effect as if never incorporated herein, but all other provisions of this Agreement and any remaining portion of any provision which is not deemed illegal, invalid or unenforceable shall continue in full force and effect.

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9.8 **No Waiver.** No failure or delay by a Party to exercise any remedy in the event of a breach of this Agreement by the other Party will in any way operate as a waiver of such remedy, nor will any single or partial enforcement of any remedy for breach preclude the further enforcement of such remedy or the enforcement of any other remedy.

9.9 **Third Party Rights.** This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or confers upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

