

TERMS AND CONDITIONS

This Agreement (“Agreement”) is entered into as of the effective date set forth in the Work Order (as defined below) that was mutually executed by and between **SITELYFT LLC**, a LIMITED LIABILITY COMPANY/CORPORATION (“Company”) and **YOU, THE RECIPIENT OF A QUOTE FROM COMPANY** (hereafter referred to as “Client”) and describes the standard terms and conditions pursuant to which Company will provide goods and/or services to Client. In consideration of the provisions of such goods and services, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Agreement.** Company agrees to provide to Client with the services (“Services”) and to deliver to Client the items, products or other deliverables (“Deliverables”) described in the statements of work or work orders (“Work Orders”) executed from time to time by authorized representatives of both parties and which reference this Agreement. The terms and conditions (“Terms”) set forth in this Agreement apply to the Services and Deliverables and are an integral part of and are hereby incorporated into each Work Order. In the event of a conflict between the Terms and the provisions of a Work Order, the Terms shall govern and supersede the provisions of the Work Order unless the Work Order specifically states otherwise. For the purposes of this Agreement, the term “Affiliate” shall mean any entity controlling, controlled by or under common control with Client. Nothing contained in this Agreement alone shall constitute a commitment by Client to purchase Services or Deliverables. Such a commitment shall arise only from a Work Order signed by the parties. This Agreement is nonexclusive, Company may contract with other entities to perform similar services and provide similar deliverables.

2. **Work Order.** No Work Orders shall be effective unless signed by the parties. Work Orders shall specify the Services and Deliverables to be provided by Company, applicable fees, invoicing schedule, specifications, project timelines, as well as any requirements which are in addition to the general provisions of this Agreement. Any change in the Services, Deliverables, or other provisions of the Work Order may be made only by a written amendment signed by the parties. Except for Products (as hereinafter defined) and except as otherwise expressly provided in a Work Order, Company shall supply all personnel, equipment, assets and facilities necessary to perform the Services and provide the Deliverables. Upon signature by both of the parties, such Work Order shall be a binding contract between Company and Client. Company shall not commence work on the Services or Deliverables under any Work Order until receipt of such signed Work Order and, if applicable, a purchase order covering such Work Order.

3. **Fees; Expenses; Payment.** Fees payable under a Work Order are set forth in the Work Order and shall be valid for a period of one year from the Effective Date of the Work Order. Effective on the anniversary date of each outstanding Work Order under this Agreement, the fees or rates payable under the applicable Work Order shall be increased by a percentage amount that considers cost of living adjustments and other market factors.

Company shall invoice Client as set forth in the applicable Work Order. Unless set forth to the contrary in a Work Order, Client shall pay invoices within thirty (30) days of receipt by Client. Client may withhold payment of any invoice disputed in good faith, if Client notifies Company of such dispute within five (5) days after the receipt of the invoice. If Client fails to pay when due any properly invoiced amount that is not disputed in good faith by Client, and does not cure the failure within ten (10) business days of Company’s written notice, then Company may suspend all work for Client until such failure is cured (and terminate this Agreement and all Work Orders if payment failure is not cured with ten (10) business days of work being suspended). If Company brings a legal action to collect the overdue amount, then Company may also collect its reasonable costs of collection, including attorneys’ fees and court costs. To the extent set forth in the applicable Work Order, Client will reimburse Company for actual, out-of-pocket expenses in connection with the Services and other expenses (such other expenses are subject to Client’s prior approval) Company will submit its expense invoice, including copies of expense receipts.

4. **Acceptance of Deliverables.** Upon receipt of the Deliverables pursuant to a Work Order, Client will test such Deliverables to determine their compliance with the applicable Work Order and this Agreement. Within ten (10) business days (or such other number of days as may be mutually agreed upon) following Client’s receipt of the Deliverables (the “Testing Period”), Client will provide Company with written acceptance or rejection of the Deliverables. In the event of rejection, Client shall provide to Company the reasons for rejection in reasonable detail including a statement of errors explaining the non-conformity of the Deliverables with the applicable Work Order. Company will correct the errors identified in the statement of errors and deliver the corrected Deliverables to Client within five (5) business days (or such other number of days as may be mutually agreed upon) of receipt of the statement of errors. The procedure set forth in this paragraph shall be repeated until Client accepts the Deliverables or the parties agree otherwise. Client will be deemed to have accepted the Deliverables if no acceptance or rejection is provided to Company within ten (10) business days of Client’s receipt of any Deliverables.

5. **Products.** Any samples, content, products, logos, images, writings, intellectual property or other materials, whether to be added or incorporated into the Services or Deliverables or not to be delivered to Company by Client in connection with a Work Order (“Products”) are to be delivered to Company in a timely manner to Company in the manner set forth in the Work Order. Title and risk of loss to the Products shall remain with Client at all times.

6. **Product Rights.** Client represents and warrants to Company that it has the right to provide Company the Products solely for use in the Services or Deliverables under and in accordance with the applicable Work Order. Client shall indemnify, defend and hold Company harmless against any expenses, damages, costs, liabilities or losses, including, without limitation, reasonable attorneys’ fees, resulting from any suit or proceeding instituted or claim asserted (including settlement of any of the foregoing) for infringement of patents, copyrights, trademarks or other intellectual property rights under the laws of the United States or any other nation or violation of any law arising from Company’s use of the Products in accordance with the applicable Work Order.

7. **Deliverables, Ownership, and Intellectual Property.** (a) Deliverables. Company will deliver to Client all images or files necessary to implement Deliverables and perform the Services specifically referenced in the Work Order. The Client will be the sole owner of the final Deliverables as well as all files necessary to implement the Deliverables excluding Company’s Background Intellectual Property (as defined below). All such Deliverables created by Company and delivered to Client hereunder will be deemed “Work Product” and are works-for-hire, owned exclusively by Client, subject to Company’s rights as set forth in paragraph 7(b) below. Company hereby assigns to Client all right, title and interest worldwide in and to the Work Product, including, without limitation, copyrights, trademarks, trade secrets, patents, contract and licensing rights and all derivative works thereto. Client will be deemed the owner of any copyrightable material created as part of the Deliverables, subject to Company’s rights as set forth in paragraph 7(b). Unless specifically stated in the Work Orders, for proprietary and competitive reasons, Company will not release the source files used to generate the Deliverables. These files have no impact on the ability of the Client to use the final Deliverables.

(b) Background Intellectual Property. Each party shall retain ownership or control over its Background Intellectual Property (as hereinafter defined) used in performance of the Agreement. Nothing in this Agreement transfers any control, license (except to the extent may be licensed hereunder) or ownership rights of one party’s Background Intellectual Property to the other party. For purposes of this Agreement, “Background Intellectual Property” means all Intellectual Property used, disclosed or delivered in performance of this Agreement that is: (a) developed, authored, invented, controlled or licensed by either party or its designee(s) prior to, or as of, the Effective Date of this Agreement; or (b) developed, authored, invented, controlled or licensed by either party or its designee(s) after the Effective Date of this Agreement but not in connection to or in performance of this Agreement. Company’s Background Intellectual Property shall also include any improvements, enhancements, modifications and/or derivative works to the Company’s Background Intellectual Property and any new developments, tools, utilities or standards related to the foregoing made during the course of performing Services hereunder to the extent such improvements, enhancements, modifications, derivative works, tools, utilities, standards, and developments of general applicability are not specifically applicable to Client’s business, Client’s Confidential Information or Client’s Background Intellectual Property adapted to or incorporated into any Work Product. Further, “Intellectual Property” means: (a) all inventions and discoveries (whether or not patentable) and any patents and patent applications; (b) all registered and unregistered trademarks, service marks, trade dress, logos, trade names, whether issued or filed, including all goodwill associated with therewith and all applications, registrations and renewals in connection therewith; (c) all works of authorship, copyrights, and all applications, registrations and renewals in connection therewith; (d) all technical data, trade secrets, proprietary information and Confidential Information related thereto (including ideas, research and development, know how, compositions, designs, drawings, specifications); and (e) all computer software (both Executable and Source Code), including hard copy and soft copy as well as all data and related documentation in connection therewith. During the term of this Agreement, each party grants to the other party the rights and licenses to each other’s Background Intellectual Property as required by each party to solely perform its obligations hereunder. To the extent that Company’s Background Intellectual Property is incorporated into the Work Product produced by Company and delivered to Client under this Agreement, Company grants to Client a perpetual, worldwide, royalty-free, non-exclusive license to all such Background Intellectual Property as incorporated into the Work Product to use the Work Product.

8. **Warranties and Disclaimer.**

(a) Company warrants that the Services performed and the Deliverables prepared in a professional and workmanlike manner, by properly trained personnel, in accordance with generally accepted industry practices, and in a manner that complies with all applicable laws and regulations.

(b). Company represents and warrants that the Deliverables do not infringe upon any third party right. In the event the Services or Deliverables are or are likely to become the subject of a claim of infringement of any third party rights, Company, at its sole option and expense, shall (i) modify the Deliverables so that they are non-infringing but functionally equivalent; (ii) replace the infringing

Deliverable(s) with non-infringing substantially similar products reasonably acceptable to Client or (iii) if none of the foregoing are commercially reasonable, refund to Client fees for the Deliverables and terminate the Agreement and any accompanying Work Order.

(c). Except as specifically set forth herein, all Services and Deliverables are provided "AS IS," WITHOUT ANY WARRANTY OF ANY TYPE, EXPRESS OR IMPLIED. COMPANY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, OR ARISING BY USAGE OF TRADE OR COURSE OR DEALING INCLUDING WITHOUT LIMITATION, WARRANTIES OF PERFORMANCE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

CLIENT UNDERSTANDS THAT ASSESSING ACCESSIBILITY IS HIGHLY COMPLEX, SUBJECTIVE AND CHANGEABLE, AND AS SUCH, ACHIEVING ABSOLUTE OR TOTAL COMPLIANCE IS NOT POSSIBLE. ACCORDINGLY, COMPANY MAKES NO WARRANTY THAT THE SERVICES OR DELIVERABLES PROVIDED WILL ENSURE COMPLETE COMPLIANCE WITH APPLICABLE ACCESSIBILITY LAWS, REGULATIONS AND/OR STANDARDS. COMPANY STRONGLY RECOMMENDS THAT CLIENT REGULARLY ENGAGE IN BOTH MANUAL AND INTERNAL AUTOMATED TESTING OF ITS WEBSITES, APPS AND SERVER(S) IN ORDER TO ENSURE THE HIGHEST POSSIBLE LEVEL OF ACCESSIBILITY, COMPLIANCE AND USABILITY. COMPANY DOES NOT WARRANT OR GUARANTY ANY SPECIFIC LEVEL OF ACCESSIBILITY OR COMPLIANCE AND ASSUMES NO RESPONSIBILITY IN THE EVENT A CLAIM IS MADE AGAINST CLIENT BASED UPON OR ALLEGING A LACK OR FAILURE IN ACCESSIBILITY OR COMPLIANCE WITH APPLICABLE ACCESSIBILITY LAWS, REGULATIONS AND/OR STANDARDS IN RESPECT OF CLIENT'S WEBSITES OR APPS, REGARDLESS OF WHETHER COMPANY WERE ENGAGED TO ASSIST WITH ACCESSIBILITY.

COMPANY MAY PROVIDE MANUAL AUDITING AND TESTING IN RESPECT OF ACCESSIBILITY COMPLIANCE, AS REQUESTED BY CLIENT, WHICH WILL PROVIDE A GOOD STARTING POINT IN CLIENT'S EFFORTS TOWARD COMPLIANCE. COMPANY IN AUDITING AND PERFORMING ACCESSIBILITY TESTING, IS NOT PROVIDING LEGAL SERVICES OR ADVICE. ANY INFORMATION PROVIDED BY COMPANY RELATING TO THE LAW AND/OR HOW IT APPLIES TO CLIENT AND ITS WEBSITES, APPS AND SERVER(S) IS FOR INFORMATIONAL AND EDUCATIONAL PURPOSES ONLY. CLIENT SHOULD SEEK THE ADVICE OF AN ATTORNEY FOR ANY LEGAL ADVICE REGARDING COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT ("ADA") AND WEBSITE ACCESSIBILITY LAWS APPLICABLE TO CLIENT.

9. **Compliance with Laws.** Company shall provide all services under this Agreement in accordance with all applicable federal, state and local laws, rules and regulations.

10. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, LIABILITY OF COMPANY TO CLIENT FOR DAMAGES FOR ANY CLAIM WHATSOEVER, AND REGARDLESS OF THE FORM OF ANY ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING, BUT NOT LIMITED TO NEGLIGENCE SHALL BE LIMITED TO THE PRICE SPECIFIED IN THE WORK ORDER FOR THE SPECIFIC SERVICES AND/OR DELIVERABLES THAT CAUSED THE DAMAGES OR THAT ARE THE SUBJECT MATTER OF, OR ARE DIRECTLY OR INDIRECTLY RELATED TO THE CAUSE OF ACTION. IN NO EVENT SHALL COMPANY BE LIABLE TO CLIENT FOR LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF USE OR OTHER SPECIAL COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION THEREOF, WHETHER IN CONTRACT OR IN TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST CLIENT BY ANY THIRD PARTY.

11. **Confidential Information.**

(a) A party disclosing ("Discloser") Confidential Information to the other party ("Recipient") shall be deemed to have done so under the terms of this Agreement. As used herein, "Confidential Information" shall mean any business or technical information, whether oral or written, whether or not stored in any medium, relating to Discloser's business, including, but not limited to equipment, software, designs, technology, technical documentation, product or service specifications, applications, methodologies and other know-how which is identified as Confidential Information at the time of disclosure. Such Confidential Information includes original Information supplied by Discloser, as well as all copies and any reports, analyses, products and other material derived from or containing such original Information.

(b) Recipient's obligations under this Agreement shall not apply to any Confidential Information which is (i) in or enters the public domain through no breach of this Agreement by Recipient; (ii) already in the possession of Recipient at the time of initial disclosure and with respect to which no obligation of confidentiality exists; (iii) independently developed by Recipient without reference to Discloser's Confidential Information; (iv) approved for use or disclosure by written authorization of the Discloser; or (v)

the subject of an order issued by a court or other government entity compelling disclosure, provided however, that in the event disclosure is required by law, Recipient will provide Discloser with prompt notice of such requirement in order to enable Discloser to seek an appropriate protective order and will provide assistance, as required by Discloser, in seeking such order. Recipient agrees, where there is any uncertainty as to the confidential status of any information proposed to be used or disclosed by Recipient, to consult with and seek the approval of Discloser before such use or disclosure.

(c) Recipient will use Confidential Information only for the purposes of its business relationship with Discloser. Except as may be permitted by this Agreement, Recipient shall hold in confidence, shall not disclose to any other person who is not under a like obligation of confidentiality, and shall not exploit for Recipient's own benefit or for the benefit of another person or organization, any Confidential Information. Recipient shall use at least the same level of diligence to protect Discloser's Confidential Information from unauthorized use or disclosure as it uses to protect its own confidential or proprietary Information, but in no event shall Recipient use less than reasonable care. Each party will promptly notify the other of any unauthorized disclosure of any Confidential Information.

(d) Neither this Agreement nor the disclosure of Confidential Information hereunder shall be construed as granting any right or license, express or implied, under any copyright, patent, trade secret, or other intellectual property right now or hereafter owned or controlled by Discloser. Recipient acknowledges that it is granted only the limited right to use Confidential Information as provided herein, and that such right is revocable at will by Discloser and is not coupled with any interest in the Confidential Information. Recipient shall not assert any right, title or interest in the Confidential Information or in any documentation, media or any other material provided to Recipient in connection with the Confidential Information. Recipient shall not reverse engineer or attempt to derive the composition or underlying information or structure of any Confidential Information. Nothing in this Agreement shall be construed as an obligation by either party to disclose any Confidential Information or enter into a further contract or other business relationship with the other party.

(e) Any Information provided hereunder, whether Confidential Information or otherwise, is provided by Company on an "AS IS" basis. Company shall not be liable under any circumstances for any kind of damages whatsoever arising from any use by Client of such Confidential Information, whether or not such use is authorized hereunder.

(f) The parties acknowledge that the obligations contained in this Agreement regarding Confidential Information shall survive for a period of two (2) years from the later of the effective date of this Agreement or the date on which all business relationships entered into by the parties with each other are terminated. Recipient acknowledges and agrees that monetary damages may not be an adequate remedy for any breach of the provisions regarding Confidential Information set forth in this Agreement and that Discloser shall be entitled to seek an injunction or specific performance as a remedy for any breach, and that such remedies are not exclusive but in addition to any other remedies available.

12. **Assignment.** Neither party may assign their rights and obligations under a Work Order or this Agreement without the other party's prior written consent, which shall not be unreasonably withheld; provided, however, that upon written notice to the other party, either party may assign this Agreement, and all its rights and obligations thereunder, to (i) an Affiliate or (ii) an acquiring entity or successors and assigns in the event of a merger, reorganization, consolidation, or sale of all or substantially all of such party's assets and in the case of Client, a sale, transfer or assignment of any portion of the Client's assets related to the Deliverables and/or Work Product. Any attempt to assign this Agreement in contravention of this Section shall be void and of no force and effect unless otherwise agreed to in writing.

13. **Taxes.** Client shall be responsible for and pay all applicable federal, state or local taxes or charges (including without limitation sales, use or excise taxes) together with any penalties or interest thereon that are imposed in connection with the fees and charges paid or payable by Client to Company pursuant to this Agreement and any Work Order (except taxes based on Company's net income or gross receipts). Client shall pay all such applicable amounts directly to the taxing authority unless the taxing authority requires that Company collect and remit such amounts to the authority in which case, Client shall pay to Company or reimburse Company for such amounts. If applicable, Client shall provide to Company a copy of Client's tax exemption certificate. Client and Company shall each have the right to protest or appeal any tax or charge assessed against it by any taxing authority with respect to the subject matter of this Agreement.

14. **Force Majeure.** Neither party shall be liable for any damages or penalty for delay or inability to perform its obligations hereunder or failure to give notice of delay or inability when and to the extent such delay or inability is due to the elements, acts of God, or any other causes beyond reasonable control of the party; provided, however, the party shall provide written notice to the other party of the occurrence of such an event. Should such an occurrence continue for over thirty (30) days, Client may terminate this Agreement without penalty, and Company shall promptly refund any unused prepaid fees provided to Company under the Work Order(s) at issue.

15 **Independent Contractor.** Company is an independent contractor of the Client, and nothing in the course of the parties' dealings shall establish a relationship of employer/employee, principal/general agent, master/servant, franchiser/franchisee, joint ventures, or partners. Neither party shall have any authority to make representations on behalf of or to bind the other, or to hold itself out as having authority to do so.

16. **Term and Termination.**

(a) **Term.** This Agreement shall commence on the Effective Date and shall remain in full force and effect for three (3) years, unless earlier terminated in accordance with the terms of this Agreement.

(b) **Termination with Cause.** Company may terminate this Agreement for Client's failure to make timely payments as set forth in Section 3 of this Agreement. Either party may terminate this Agreement if the other Party fails to cure any other material breach of this Agreement within thirty (30) days after written notice of such breach.

(c) **Effect of Termination.** In the event this Agreement is terminated pursuant to this section, all Work Orders must be paid in full. In addition, if this Agreement is terminated with Cause, Company shall be paid any amounts owing for Services completed in compliance with the applicable Work Order and this Agreement as of such termination date and approved expenses incurred through the termination date. In such event, Client shall also reimburse Company for the costs of all documented non-cancelable expenses and materials on order from, or owed to, third parties (which materials shall become Client's property) resulting from such termination or suspension of Services, provided that Company provides written documentation evidencing all such non-cancelable expenses and materials. All work in progress will be delivered to Client in its current state. In addition, Company shall promptly refund any unused prepaid fees provided to Company under the Work Order(s) at issue for Services/Deliverables not completed as of the termination date. Termination of this Agreement with Cause will result in the coterminous termination of all Work Orders as of the effective date of termination.

17. **Disclosure.** Neither party shall issue any press release or other public disclosure concerning this Agreement without prior written consent of the other party, which shall not be unreasonably withheld. However, either party may disclose the existence of this Agreement or its contents as may be required to comply with applicable laws or regulations, so long as such disclosure is in accordance with Section 11 of this Agreement. Notwithstanding the above, Client hereby consents to Company's use of Client's name and representative work, with prior review and written consent, in any listings of representative clients and work portfolio on Company's website or any other marketing materials provided that such representative work shall not contain (or shall have removed therefrom) any Client Confidential Information.

18. **[Non-solicitation.]** During the term of this Agreement and for one (1) year after its termination, neither party will, without the other party's express written consent, directly or indirectly, solicit or induce employees of the other party to terminate their employment with the other party. A general advertisement or a request for employment initiated exclusively by the employee is not considered a solicitation.]

19. **Governing Law; Venue.** This Agreement is governed by the laws of the STATE OF TEXAS, without regard to its conflict of laws provisions. The parties agree that any court proceedings commenced by or against either party shall be resolved by a court without a jury, and each party waives its right to a jury as to any dispute or claims arising under or related to this Agreement. The sole and exclusive venue for any action arising out of or related to this Agreement shall be the COURTS

20 **Notice.** All notices under this Agreement shall be considered delivered the day after such notice was sent to the other party via traceable means for overnight delivery to the address shown below each party's signature.

21. **Entire Agreement.** The Work Orders and this Agreement constitute the complete and entire agreement between the parties with respect to the Services and Deliverables and supersede all prior or contemporaneous agreements, representations and/or communications, either oral or written, between the parties hereto or any representative of such parties with respect to the subject matter thereof and hereof. No changes to this contract or waiver of any provision hereof will be binding on Company unless made in writing and signed by a duly authorized representative of Company. Company's failure to object to provisions contained in any communication from Client shall not be deemed a waiver of these Terms.

22. **Survival.** The provisions of Sections 3, 6, 7, 8, 10, 11, 13, 16, 17, [18,] 21 and 22 shall survive any expirations or earlier terminations of this Agreement and remain in effect in accordance with their terms.

23. **Counterparts; Facsimile.** This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one agreement binding on all parties, notwithstanding the fact that all parties have not signed the original or the same counterpart. The facsimile signature of any party to this Agreement or a PDF copy of the signature of any party to this Agreement, whether delivered by e-mail, mail, or personal delivery, for purposes of execution, is to be considered to have the same binding effect as the delivery of an original signature on an original document.

24. **Severability.** If any provisions of this Agreement or the Work Order are held invalid or unenforceable, only that provision shall be affected, and the remainder of this Agreement shall remain in full force and effect.