



Appendix C: Additional Terms and Conditions

1. **Client Obligations.** *Client understands and agrees that Friendemic's performance of the Services is dependent upon Client's timely and effective performance of its responsibilities hereunder and under any SOW ("Statement of Work"), and that Friendemic shall in no way be liable for failure to complete the Services if such failure was due to Client not completing obligations herein in a timely manner. Client agrees to undertake the Client responsibilities outlined here or in any applicable SOW. Client responsibilities include:*
 - a) *Granting to Friendemic access and control (including logins, passwords, and administrator-level access) to social media networks, email addresses, Google Analytics, or other platforms owned or controlled by the Client as needed*
 - b) *Securing Client's internal approvals, including for advertising Friendemic creates or places on Client's behalf. At Client's request, Friendemic shall provide Client opportunity to pre-approve all advertising, and Client shall be able to view all advertising directly on the social media platforms. As such, Friendemic's liability for any advertisement shall be capped at the total amount of management fee charged by Friendemic for running any specific advertisement.*
 - c) *If requested, Friendemic shall provide proofs of content (e.g. ad or post copy or images) to Client, and permit up to two rounds of edits from Client. If edits aren't received from Client within 48 hours of final proof being delivered, Client agrees that such inaction represents approval of said content. If Client requests edits to content already created and approved that are not correcting Friendemic errors, such edits shall count as an additional piece of content. Edits will be completed the same business day if requested before 3pm Mountain Time; otherwise they will be completed on the next business day. Additional charges may apply to edit content that has already been published. Edits may include copy / call to action, targeting, dates, budget, or placement, but after the first proof is approved, may not include Facebook ad type, imagery, or inventory feed. If Client does not provide dealer incentive for agreed upon ad budget by the 10th of the month, Friendemic may select an offer to run on client's behalf.*
 - d) *Procurement of any third party products as mutually agreed ("Third Party Products")*
 - e) *Ensuring the legality of any use by Client of Friendemic's software tools or Services as pertaining to all state, local or federal or other laws and regulations, including, but not limited to, activities such as contests, sweepstakes, giveaways or similar programs managed by Friendemic, and obtaining consents for communicating with consumers via email, text message or other electronic means using Friendemic software. By providing phone numbers, email addresses or other customer contact information to Friendemic for the purpose of sending communications to customers via Friendemic systems, Client agrees that it is the initiator and in effect the sender of any such communications. Client agrees to indemnify and hold harmless Friendemic for any alleged or actual violation of any such law or applicable regulation.*

Tasks that are primarily the responsibility of Client's personnel will remain Client's responsibility, even if Friendemic assists Client in performing such tasks. Client agrees that Friendemic may rely on all Client decisions and Client approvals with regard to the Services conveyed to Friendemic.
2. **Confidential Information.** *Friendemic and Client acknowledge that in the course of this Agreement, each Party may come into contact with Confidential Information of the other Party. Confidential Information shall include user or customer information, sales and website statistics, advertising performance, the Friendemic software platform, business financials, employee lists, and any other information of such a nature that a reasonable person would believe it to be confidential, whether or not the information was marked as such. Both parties agree to treat Confidential Information of the other Party with the same or higher degree of protection and care with which they treat their own Confidential Information, and to return or destroy any copies of Confidential Information upon Termination or upon the written request of the other Party, provided that one copy may be preserved for archival purposes as may be required by law. Confidential Information shall not include any information that was previously known lawfully to either Party, has been independently developed by either Party, or is required to be disclosed by the order of a governmental agency, legislative body or a court of competent jurisdiction. The foregoing notwithstanding, Client's status as a client of Friendemic shall not be Confidential Information, and Friendemic shall be permitted to share aggregate and/or anonymized Client results in its own marketing efforts.*
3. **Payment.** *All fees or payments in this contract refer to U.S. dollars. Client agrees to be billed by Friendemic for any third party data advertising costs approved or requested by Client, including media spend (e.g. Facebook) or related targeting or other data spend (e.g. Oracle, Polk) incurred. Client agrees to pay a 3% surcharge to Friendemic to cover merchant processing costs if paying by credit card; otherwise Client may pay by check or ACH transfer. Any fees owed to Friendemic and remaining unpaid after thirty (30) days shall incur the higher of (a) a \$25 late fee for each month or portion thereof that any balance remains unpaid; or (b) accrue interest at the highest rate allowed by law. If collection procedures are required, Client shall pay all expenses of collection and all reasonable attorneys' fees and costs incurred by Friendemic in connection with such collection proceeding, regardless of whether or not a suit is filed. Failure of Client to make any payment of any Fees when due shall be deemed to be a material breach of this Agreement and shall be sufficient cause for the immediate*



suspension of Friendemic's provision of services and/or termination of this Agreement. Where Friendemic Services may be eligible for co-op reimbursements from manufacturers, Friendemic will assist in providing documentation, but the Client shall be responsible for all payments to Friendemic regardless of the Client's ultimate receipt of co-op reimbursements.

4. **Representations and Warranties.** FRIENDEMIC MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES, THE DELIVERABLES, THE KNOW-HOW, THEIR USE OR PERFORMANCE, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN, WHETHER EXPRESS, IMPLIED, STATUTORY, ORAL, IN WRITING OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, AND THE SAME ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CLIENT FROM FRIENDEMIC, ITS LICENSOR(S) OR ANY AFFILIATES SHALL CREATE ANY WARRANTY, REPRESENTATION, OR GUARANTEE NOT EXPRESSLY STATED IN THIS AGREEMENT.
5. **Limitation of Liability.** NEITHER FRIENDEMIC AND ITS AFFILIATES, NOR ITS AND THEIR RELATED PARTIES SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OR INTERRUPTION OF BUSINESS, LOST PROFITS, LOSS OF GOODWILL, LOSS OF REVENUE, LOSS OF ECONOMIC ADVANTAGE, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ETC.) ARISING OUT OF OR RELATED TO THE SERVICES, THE DELIVERABLES OR THE KNOW-HOW, THE USE OR PERFORMANCE OF SUCH DELIVERABLES AND KNOW-HOW, THIS AGREEMENT OR ANY SOW, OR THE TRANSACTIONS CONTEMPLATED HEREIN OR THEREIN, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR STRICT LIABILITY), PROPRIETARY RIGHTS INFRINGEMENT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF FRIENDEMIC AND ITS AFFILIATES, AND ITS AND THEIR RELATED PARTIES, HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE MAXIMUM AGGREGATE LIABILITY OF FRIENDEMIC AND ITS AFFILIATES, AND ITS AND THEIR RELATED PARTIES, FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE AMOUNT EQUAL TO THE FEES ACTUALLY PAID BY CLIENT AND RECEIVED BY FRIENDEMIC UNDER THIS AGREEMENT PURSUANT AND ANY APPLICABLE SOW(S). CLIENT ACKNOWLEDGES AND AGREES THAT THE NEGATION OF DAMAGES AND THE LIMITATION OF LIABILITY HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN UNDERLYING THIS AGREEMENT AND EACH SOW AND REFLECT A FAIR ALLOCATION OF RISK. THE SERVICES WOULD NOT BE PERFORMED, AND THE DELIVERABLES AND KNOW-HOW WOULD NOT BE CREATED AND/OR PROVIDED, WITHOUT SUCH LIMITATIONS AND THE PARTIES EXPRESSLY AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CATEGORIES OF DAMAGES, IN SUCH JURISDICTIONS, THE PARTIES AGREE THAT THE LIABILITY OF FRIENDEMIC AND ITS AFFILIATES, AND ITS AND THEIR RELATED PARTIES, SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY SUCH JURISDICTION. Friendemic shall not be liable for any failure or delay caused by events beyond Friendemic's reasonable control, including, without limitation, Client's or a third party's failure to furnish necessary information; sabotage; failure or delays in transportation or communication; failures or substitutions of equipment; strikes; riots; labor disputes; accidents; acts of God; or technical failures.
6. **Indemnification.** Client shall defend, indemnify and hold harmless Friendemic and its Related Parties from and against any and all losses, causes of action, claims, allegations, liabilities, costs, damages and expenses whatsoever (including, without limitation, reasonable attorneys' fees), regardless of the form of action ("Claim"), and shall promptly reimburse Friendemic for all Claims, arising out of or in connection with: (a) any Claim that any text, work, material or content requested, specified or provided by Client, including without limitation for use in conjunction with the Services or incorporated into any deliverable violates or infringes any applicable regulation or proprietary or intellectual property right of any third party; (b) any third party Claim caused by, relating to or arising out of the sale, conveyance or other disposition (or attempt to do the same) of goods or services offered by Client; (c) made by a third party against Client through social media networks managed by Friendemic, or in response to content published or shared by Friendemic on the Client's behalf or (d) any third party Claim caused by, relating to or arising out of an alleged breach of any representation, warranty, covenant or other term or condition of this Agreement by Client.
7. **Non-Solicitation of Employees.** Without the prior written consent of Friendemic, the Client shall not, during the term of this Agreement and for a period of two years following termination of this Agreement, solicit or cause to be solicited the employment of, or employ, any employee of Friendemic or any person or entity performing obligations hereunder on behalf of or under the direction of Friendemic.
8. **Assignment.** Neither this Agreement nor any of the rights and obligations created in this Agreement may be assigned, in whole or in part, by either party, without the prior written consent of the other party, except that either party may assign this Agreement to any entity which by merger, share exchange, combination or consolidation of any type, operation of law, asset purchase or otherwise, acquires substantially all of the business of such party, so long as prior to the effective date of any such assignment or transfer such successor, the transferee or assignee expressly agrees, to assume and fully perform all of the assigning party's obligations under this Agreement



9. **Jurisdiction.** *This Agreement is made under and will be construed in accordance with the laws of the State of Utah, other than such laws, rules, regulations and case law that would result in the application of the laws of a jurisdiction other than the State of Utah. Any suit to enforce any provision of this Agreement, or arising out of or based upon this Agreement, shall be brought exclusively in the state courts of the State of Utah and the federal courts of the United States, located in Salt Lake City, Utah. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT UNDER OR IN RELATION TO THIS AGREEMENT AND ITS INTERPRETATION, INCLUDING ANY SOW.*

I have read and hereby agree to the terms and conditions specified above, and I understand that I am bound by these terms and the conditions.

Authorized Client Signature _____ Date _____