



## Brandlive Services Agreement

WHEN YOU CLICK A BOX INDICATING ACCEPTANCE OF THIS AGREEMENT OR WHEN YOU EXECUTE AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU, THE COMPANY ENTERING THIS AGREEMENT ("CLIENT"), AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ACCEPT THIS AGREEMENT ON BEHALF OF YOUR COMPANY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT.

This Brandlive Services Agreement ("Agreement") constitutes a binding agreement between Brandlive, Inc. ("Brandlive") and the Client identified in an order document that references this Agreement ("Order Form") or the Client who accepts the terms of this Agreement via click-through acceptance. Client agrees that the terms of this Agreement will govern Client's use of the Services (as defined in Section 1).

This Agreement includes four parts: (1) this Agreement, (2) the Service Level Agreement, (3) the description of each service in "Service Descriptions," and (4) the Acceptable Use Policy ("AUP"), each of the foregoing is available at [www.brandlive.com/legal](http://www.brandlive.com/legal).

### 1. Services.

- 1.1. Brandlive Services. Brandlive provides a software-as-a-service platform that allows Client to produce single or recurring shows, meetings or events for attendees to participate in (each an "Project"), and certain production or other related services, as further described in each Order Form and in this Section 1.1. The "Services" may consist of the following elements, as identified in an Order Form:
  - a. Platform. Brandlive's Platforms may include the Brandlive Platform, Brandlive's proprietary software-as-a-service platform that allows Client to host or produce Projects, and includes the software, features, functionality, information, components, and APIs required to deliver the Brandlive Platform ("Brandlive Platform") or Studio & VX, Brandlive's proprietary software-as-a-service-platform that allows Client to host or produce projects (webinars, events, internal townhalls or allhands meetings), and includes the software, features, functionality, information, components, and APIs required to deliver the platform ("Studio & VX");
  - b. Brandlive Studios. If Client purchases creative services, Brandlive will create or provide Client with access to Brandlive Studios creative assets, such as intro videos/animation, b-roll, stickers, graphic overlays, chapter cards, walk-up cards, lower thirds, or other similar types of creative elements ("Studio Assets"). Studio Assets (or elements thereof) may be used by Brandlive for other client projects or made available to clients generally within the Brandlive Platform. Brandlive Studio Assets are not Client Content or Deliverables. If client purchases onsite services, add-ons or production services, Brandlive or a Brandlive partner may provide onsite production or professional services which are created exclusively for Client in connection with a Project, according to Client's



specifications (e.g., video streaming, the raw video recording or sizzle reel of the Project) (each a "Deliverable");

- c. **Support; Analytics.** Brandlive may provide in-person or remote Project support prior to and during a Project. Support may include standard or premium support. Brandlive may provide analytics, which includes Project-specific reports related to attendee activity within a Project or across a series of Projects; or
- d. **Presenter Kits.** Brandlive may provide Client with a kit including a web camera, microphone, light equipment, or other similar equipment ("Presenter Kit"). The Presenter Kit is leased to Client and not sold. Client will reimburse Brandlive for the cost of the Presenter Kit if it is not returned within 30 days of the completion of the applicable Project or if the Presenter Kit is damaged. Brandlive reserves the right to require a refundable deposit for Presenter Kits.

**1.2. Client Account Creation; Users.** To access and use the Brandlive Services, Client must create an account ("Account"). When creating an Account, Client will be required to provide personal information about users who are authorized to access and use the platforms on behalf of Client ("Authorized Users"). Client may also invite Project attendees to register and attend the Project ("Attendees"). Client determines the type of registration information to be collected from Attendees and the purpose for which such information is collected and used. Client will not require Attendees to provide sensitive personal information as registration information. Client is responsible for the acts or omissions of Client's Authorized Users and Attendees, including any breach of this Agreement.

**1.3. Intellectual Property; Licenses and Ownership.**

- a. **Brandlive's Platforms and License.** Brandlive hereby grants to Client for the Term (as defined in Section 5.1), a revocable, non-exclusive, non-transferable, limited license to access and use the Brandlive Platform, Studio & VX and, if applicable, the Studio Assets to produce and host Projects, subject to the restrictions and limitations set forth in this Agreement.
- b. **Deliverables.** Brandlive grants to Client all right, title and interest in and to the Deliverables upon payment in full of the Fees (as defined in Section 6) pertaining to the Deliverables. Upon final payment for the Deliverables, the Deliverables will be considered a "work made for hire" under 17 U.S.C. Section 101, et. Seq. To the extent that the Deliverables contain any material subject to any rights that are not effectively assigned to Client (including Studio Assets incorporated into a Deliverable), upon full and final payment of the Fees pertaining to a Deliverable, Brandlive grants to Client, a perpetual, irrevocable, royalty-free, fully paid-up, transferable, worldwide license to (i) make, use, sell, sublicense, execute, reproduce, distribute, and modify the Deliverables, (ii) create derivatives of the Deliverables, (iii) publicly display and publicly perform the Deliverables, (iv) make, have made, use, sell, import, and export products and services that include the Deliverables, and (v) otherwise commercially exploit the Deliverables by all means and in any medium or format, now known or later developed.

- c. **Client Content; Client Data.** As between Client and Brandlive, Client owns all right, title and interest in and to the Client Content and Client Data (as defined in this Section 1.2(c)). During the Term, Client hereby grants to Brandlive a worldwide, non-exclusive, non-sublicensable, royalty-free license to use, reproduce, store, perform, publish, display, transmit, translate, and prepare derivatives of Client Content solely to provide the Services to Client. Client is responsible for ensuring that Client has properly licensed and has the right to use Client Content within the Project, and that Client is legally permitted to provide Client Data to Brandlive. "Client Content" means the documents, music, fonts, graphics, videos, gifs, logos, trademarks, presentations, assets, or other materials or content that is provided by or on behalf of Client to Brandlive for inclusion in a Project. "Client Data" means the information or data provided to Brandlive by or on behalf of Client, including registration or Attendee information.
  - d. **Brandlive's Intellectual Property.** As between Brandlive and Client, Brandlive owns and retains all right, title, and interest in and to (i) the Brandlive Services and the information, technology, infrastructure, software, source code, object code, hardware, databases, electronic systems, networks, and all applications, APIs or client-side software required to host, support, provide or deliver the platforms, and the features, functionality, and look and feel, (ii) the inventions, know-how, business intelligence, trade secret, materials, frameworks, documents, assets or information which are used by Brandlive, or made available or accessible to Client in connection with the Services, including all documentation regarding the use or operation of the Services, (iii) the Studio Assets and any software or technology making up the Presenter Kits, (iv) Feedback, and (v) aggregated data and performance metrics described in 1.4(f) (collectively "Intellectual Property"). Except for the limited licenses herein, nothing in this Agreement will serve to transfer to Client any right in or to the Intellectual Property.
  - e. **Client Feedback.** Brandlive may solicit, or Client may provide, feedback, comments or suggestions which relates to the performance, functionality, operation, or enhancement of the Services ("Feedback"). Feedback will be the sole and exclusive property of Brandlive. Client hereby irrevocably assigns to Brandlive all right, title, and interest in and to all Feedback. Brandlive will be free to use, disclose, reproduce, license, or otherwise distribute, and exploit the Feedback without obligation or restriction.
  - f. **Aggregate Data and Performance Metrics.** Brandlive monitors, stores, analyzes information related to the Brandlive Services for its own performance monitoring and to improve, secure, and support the Brandlive Services. This information does not include any personally identifiable information. Brandlive retains all right, title and interest in and to such aggregated data. No right or license in or to such data is granted to Client except for the right to receive reports regarding Client's Project. Brandlive grants to Client a limited, nonexclusive, royalty-free license to use such aggregated Project data included in any reports or analysis solely in connection with Client's Project and for Client's internal business purposes.
2. **Trial Services; Demo Accounts.** If Brandlive provides Client with a trial account, Brandlive will provide Client with a temporary account to access the Brandlive Platform. The trial account is



provided "as is" and "as available" with all faults and without representation, warranty, or indemnities of any kind.

### **3. Client Obligations.**

- 3.1.** Client is responsible for the Client Content and the Client Data, including the accuracy, quality, and legality of the Client Content and Client Data and the means by which Client created or acquired Client Content or Client Data. Client represents and warrants that neither Client Data nor Client Content will: (a) infringe upon any third party right, including third party rights in patent, trademark, copyright, or trade secret, or (b) constitute a breach of any right of any third party, including any right that may exist under applicable data protection law, or contract or tort theories. Client represents and warrants that Client will comply with all applicable local, state, national, and foreign laws, rules, regulations, or treaties in connection with Client's access and use of the Services, including those related to data privacy, intellectual property, communications, SPAM, or the transmission, recording, or storage of data, intellectual property, or sensitive information. Client will comply with the Acceptable Use Policy available at [www.brand.live/legal](http://www.brand.live/legal).
- 3.2.** Client acknowledges that the Services are not designed to process, transmit, store, or display sensitive information, including without limitation, personally identifiable health information, or financial information relating to any individual (such as social security numbers, credit card numbers or pins) or other information which may be deemed sensitive information by applicable law. As such, Client agrees that Client will not use the Services to collect, process, transmit, store, or display sensitive information.
- 3.3.** Client agrees not to: (a) use any robot, spider, scraper, or other similar automated data gathering or extraction tools, program, algorithm or methodology to search, access, acquire, copy or monitor any portion of the Services, (b) run mail list, listserv, any form of auto-responder, or "spam" processes via the Services, or use any processes that run or are activated while a user is not logged in, (c) attempt to decipher, decompile, disassemble, or reverse-engineer or otherwise attempt to discover or determine the source code of any software or any proprietary algorithm used, comprising or in any way making up a part of the Services, (d) attempt to probe, scan or test the vulnerability of the Services or any system or network related to the Services, or breach or impair or circumvent any security or authentication measures protecting the Services, (e) frame or mirror the Services, (f) use any device, software, or routine that interferes with any application, function, or use of the Services, or is intended to damage, create undue load, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or communication, (g) resell, sublicense, timeshare, or otherwise share the Services, or data extracted from the Services, (h) access the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, or (i) resell the Services unless Client is an authorized reseller of the Services.

- 4. Third Party Providers.** The Services may operate in connection with, integrate with, send Client Data to, or receive data from, third party sources, including without limitation, customer relationship



management platforms, social media platforms, API integration providers or payment providers ("Third-Party Services"). Third Party Services are not offered, controlled, or provided by Brandlive. A Third-Party Service may make changes to its service, or components thereof, or suspend or discontinue a service without notice to Brandlive. The availability of the Third-Party Service may depend on Client's compliance with the Third-Party Service terms and conditions. Client is solely responsible for ensuring Client complies with the Third-Party Service terms and conditions. Brandlive does not control and is not responsible or liable for how the Third-Party Services transmit, access, process, store, use, or provide data to Brandlive. Brandlive expressly disclaims all liability related to or arising from (a) any Third-Party Services, including Client's use thereof, or (b) any updates, modifications, outages, delivery failures, corruption of data, loss of data, discontinuance of services, or termination of Client's account by the Third-Party Service.

## **5. Term & Termination.**

- 5.1.** Term. The Agreement will begin on the Effective Date and will remain in effect for the term specified in each Order Form ("Initial Term"). The Initial Term will automatically renew, unless Brandlive or Client provide the other party with written notice of non-renewal at least 30 days prior to the end of the Initial Term or the applicable renewal term, or either party terminates the Agreement in accordance with section 5.2 or Section 5.3 below. The Initial Term plus any renewal term are, collectively, the "Term."
- 5.2.** Termination for Breach. Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and such breach remains uncured for a period of 30 days following the non-breaching party's written notice thereof. Brandlive may suspend or discontinue the provision of the Services in the event of a breach of this Agreement.
- 5.3.** Termination for Bankruptcy. This Agreement will terminate immediately, upon written notice, if (a) either party is declared insolvent or adjudged bankrupt by a court of competent jurisdiction, or (b) a petition for bankruptcy or reorganization or an arrangement with creditors is filed by or against that party and is not dismissed within 60 days.
- 5.4.** Effect of Termination. Upon any termination or expiration of the Agreement: (a) all rights and licenses to access the Brandlive Services will immediately terminate, (b) Client will pay any Fees due and payable, and (c) upon request, each party will return to the other or delete the Confidential Information of the other party.
- 5.5.** No Refunds. Client acknowledges that upon execution of an Order Form, Brandlive will reserve personnel to support Client's Project. Unless otherwise agreed by the parties in a written amendment referencing this Agreement or in the Order Form, the Fees paid or payable are noncancellable and nonrefundable.
- 5.6.** Survival. Any provisions that by their sense and context are intended to survive such suspension or termination will survive the termination of this Agreement including: Sections 8, 9, 11, 10 and 12.



## **6. Fees & Payment.**

- 6.1.** Client will pay the fees for the Services as set forth in the Order Form ("Fees") and will reimburse Brandlive for any travel expenses incurred by Brandlive in connection with the Services. If Client has purchased an annual license (as set forth in the Order Form), the annual license fee is Client's minimum Fee commitment during the Term.
- 6.2.** If Client disputes any Fees, Client must notify Brandlive within 120 days of the date of invoice. Invoices not disputed within 120 days from the date of invoice will be deemed accepted by Client. Brandlive may charge a late fee of 1.5% per month on any Fees not paid when due. Brandlive may suspend Client's access to the Services, or postpone or terminate a Project, if Client fails to pay the Fees when due.
- 6.3.** If any amount due by Client under this Agreement, or any other agreement for Brandlive's services, is thirty (30) or more days overdue, or 10 or more days overdue in the case of amounts Client has authorized Brandlive to charge to Client's credit card or ACH payment, Brandlive may, without limiting any other rights and remedies available to Brandlive, accelerate Client's Fee obligations such that all Fees become immediately due and payable, and Brandlive may suspend Services to Client until such amounts are paid in full.
- 6.4.** If Client cancels a Project, Client will reimburse Brandlive for all travel costs and expenses which were approved and actually incurred by Brandlive prior to Client's termination of such Project. For avoidance of doubt, cancellation of a Project does not relieve Client of any Fee obligation with respect to such Project and any outstanding Fees will become immediately due upon notice of cancellation.
- 6.5.** Brandlive may increase fees for any renewal term by up to ten percent (10%) without requiring the Client's consent. Any proposed increase will be communicated in writing at least 60 days before the renewal term begins. Increases exceeding ten percent (10%) allow the Client to terminate this Agreement by providing written notice within 15 days of receiving the increase notice. Failure to terminate will constitute acceptance of the new pricing.

- 7. Taxes.** All Fees payable by Client are exclusive of taxes or similar assessments. Client is responsible for all sales, service, use and excise taxes, taxes assessed on the use of software or any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable hereunder, other than any taxes imposed on Brandlive's income.

## **8. Confidentiality.**

- 8.1.** "Confidential Information" means (a) the non-public information of either party, including but not limited to, trade secrets, information relating to either party's product plans, present or future developments, customers, designs, costs, prices, finances, marketing plans, business opportunities, software, software manuals, personnel, research, development or know-how,

(b) any information designated by either party as “confidential” or “proprietary” or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential, (c) the terms of this Agreement, and (d) non-public Client Content or Client Data. “Confidential Information” does not include information that: (i) is in, or enters, the public domain through no breach of this Agreement by the party receiving such information, (ii) the receiving party lawfully receives from a third party without restriction on use or disclosure, (iii) the receiving party knew prior to receiving such information from the disclosing party, as evidenced the receiving party’s records, or (iv) the receiving party develops independently without reference to the Confidential Information.

**8.2. Obligations with Respect to Confidential Information.** Each party agrees: (a) that it will not disclose to any third party, or use for the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted by this Agreement, and (b) that it will use the same degree of care as it uses to protect its own Confidential Information of a like nature, but not less than a reasonable degree of care, to protect the confidentiality of Confidential Information of the other party in its possession or control. Either party may disclose Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and/or legally permitted to do so, gives reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement, or (ii) to the parties’ agents, representatives, subcontractors or service providers who have a need to know such information; provided that, such party shall be under obligations of confidentiality at least as restrictive as those contained in this Agreement. Each party will promptly notify the other party, in writing, upon becoming aware of any unauthorized use or disclosure of the other party’s Confidential Information.

**8.3. Remedies.** Each party acknowledges and agrees that a breach of the obligations of this Section 8 by the receiving party may result in irreparable injury to the disclosing party for which there may be no adequate remedy at law, and in the event of any breach or threatened breach of this Section 8, the disclosing party will be entitled to seek equitable relief, including injunction or specific performance.

## **9. Brandlive Representations and Warranties; Warranty Disclaimer.**

**9.1. Brandlive Warranty.** Brandlive represents and warrants that: (a) it will provide the Services in accordance with generally accepted industry standards, (b) it has the right and authority to enter into this Agreement and that the performance of its obligations under this Agreement will not breach or conflict with any other agreement to which Brandlive is a party, and (c) it will comply with the laws and regulations applicable to Brandlive in its performance of the Services.

**9.2. Warranty Disclaimer; No Guarantee.** EXCEPT AS SET FORTH ABOVE, BRANDLIVE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY INFORMATION OR MATERIALS PROVIDED OR MADE AVAILABLE BY BRANDLIVE. THE SERVICES ARE PROVIDED “AS IS.” BRANDLIVE HEREBY DISCLAIMS ANY AND ALL



OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BRANDLIVE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE AVAILABLE OR ERROR-FREE. BRANDLIVE WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF BRANDLIVE. THE SERVICES ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING BUT NOT LIMITED TO ANY APPLICATION IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE. BRANDLIVE IS NOT LIABLE FOR TICKET FEES YOU MAY CHARGE ATTENDEES AND WILL NOT BE RESPONSIBLE FOR REIMBURSEMENT OF ANY TICKET COSTS TO ANY ATTENDEE FOR ANY REASON.

## **10. Indemnification.**

- 10.1.** Client Indemnification. Client will defend, indemnify, and hold harmless Brandlive, its officers, directors, employees, and agents, from and against all claims, losses, damages, liabilities, and expenses (including fines, penalties, or reasonable attorneys' fees), arising from or related to Client Data, Client Content, or Client's breach of Section 3 or Section 8 of this Agreement. Brandlive will (a) provide Client with prompt written notice upon becoming aware of any such claim, except that Client will not be relieved of its obligation to indemnify Brandlive unless Client is actually prejudiced in defending a claim due to Brandlive's failure to provide such notice, (b) allow Client sole and exclusive control over the defense and settlement of any such claim; provided that, Client will not enter into any settlement agreement with respect to an indemnity claim if such settlement agreement requires any admission of liability or wrongdoing on the part of Brandlive or imposes on Brandlive any obligation (other than the obligation to stop using the Services that are subject to the indemnity claim), unless Brandlive has first consented in writing to the applicable terms of such settlement agreement, and (c) if requested by Client, and at Client's expense, reasonably cooperate with the defense of such claim.
- 10.2.** Brandlive Indemnification. Brandlive will defend, indemnify, and hold Client harmless from third party claims arising from a third-party claim that the Brandlive's Platforms infringe upon any United States patent, trademark, or copyright; provided that, Client shall (a) provide Brandlive with prompt written notice upon becoming aware of any such claim, (b) allow Brandlive sole and exclusive control over the defense and settlement of any such claim, and (c) reasonably cooperate with Brandlive in the defense of such claim. Notwithstanding the foregoing, Brandlive will not be liable for any claim that relates to or arises from: (i) custom developments, content or functionality provided to Client (including Client Content and Client Data); (ii) any modification of the Services by Client or any third party, (iii) the combination of the Services with any technology or other services, software, material or technology not provided by Brandlive, or (iv) Client's failure to use updated or modified versions of the Services made available by Brandlive. Except as set forth in 11.1(c) below, the indemnification obligation contained in this Section 10.2 is Client's sole remedy, and Brandlive's sole obligation, with respect to claims of infringement.



## **11. Remedies and Limitation of Liability.**

### **11.1. Remedies.**

- a.** In the event of a breach of the performance warranty under Section 9.1(a), or a breach of the SLA, Brandlive will use commercially reasonable efforts to provide Client with an error correction or work-around that corrects the reported non-conformity. The foregoing remedy is Client's sole and exclusive remedy for a breach of Section 9.1(a).
- b.** If the Services are subject to a claim of infringement, Brandlive may, in its sole discretion, either (a) procure for Client the right to continue to use the Services, (b) modify the Services such that they are non-infringing, or (c) if in the reasonable opinion of Brandlive, neither (a) nor (b) is commercially feasible, then Brandlive may, upon thirty (30) days' prior written notice to Client, terminate the applicable Service.

### **11.2. Limitation of Liability.**

- a.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS), ARISING FROM OR IN CONNECTION WITH THE SERVICES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BRANDLIVE WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER CONSEQUENTIAL OR OTHERWISE, ARISING FROM OR RELATED TO CLIENT'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.
- b.** EXCEPT WITH RESPECT TO SECTION 10.1 (CLIENT INDEMNIFICATION) OR SECTION 10.2 (BRANDLIVE INDEMNIFICATION), OR THE FEES PAYABLE BY CLIENT, EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED THE TOTAL FEES ACTUALLY RECEIVED BY BRANDLIVE FROM CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INCIDENT FROM WHICH THE DAMAGES AROSE.
- c.** WITH RESPECT TO SECTION 10.1 (CLIENT INDEMNIFICATION) OR SECTION 10.2 (BRANDLIVE INDEMNIFICATION), EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED \$1,000,000.
- d.** THE LIMITATION OF LIABILITY SET FORTH ABOVE IS CUMULATIVE; ALL PAYMENTS MADE FOR ALL CLAIMS AND DAMAGES WILL BE AGGREGATED TO DETERMINE IF THE LIMIT HAS BEEN REACHED.

## 12. General Terms.

- 12.1.** Assignment. Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without the other's consent in connection with a merger, reorganization, acquisition, consolidation, or sale of all, or substantially all, of its stock or assets. Any attempt to assign this Agreement other than as permitted herein will be null and void. This Agreement will inure to the benefit of, and bind, the parties' respective successors and permitted assigns.
- 12.2.** Force Majeure. A failure of party to perform, or an omission by a party in its performance of, any obligation of this Agreement will not be a breach of this Agreement, nor will it create any liability, if such failure or omission arises from any cause or causes beyond the reasonable control of the parties, including, but not limited to the following (each a "Force Majeure Project"): (a) acts of God, (b) acts or omissions of any governmental entity, (c) fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, strikes and lockouts, or (d) utility or telecommunication failures; so long as such party uses reasonable efforts to resume performance after any such Force Majeure Project.
- 12.3.** Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of or choice of law principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Multnomah County, in the State of Oregon, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.
- 12.4.** Relationship of the Parties. The parties are independent contractors as to each other, and neither party will have power or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.
- 12.5.** Notices. Any legal notice under this Agreement will be in writing and delivered by personal delivery, express courier, certified or registered mail, postage prepaid and return receipt requested, or by email. Notices will be deemed to be effective upon personal delivery, one (1) day after deposit with express courier, five (5) business days after deposit in the mail, or when receipt is acknowledged in the case of email to Brandlive. Notices will be sent to Client at the address set forth on the Order Form or such other address as Client may specify. Notices will be sent to Brandlive at the following address: Brandlive Inc., Attention: Legal, 3303 N Mississippi Ave #200, Portland, OR 97227, or in the case of email, to [legal@brandlive.com](mailto:legal@brandlive.com).
- 12.6.** Publicity. The parties may use the other party's name or trademark(s) in advertising, written sales promotion, press release(s) and/or other publicity matters, in a truthful and non-derogatory manner, unless a party specifies in writing that it does not consent to such use. Brandlive may disclose that Client is a customer of Brandlive.
- 12.7.** Severability; Waiver. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be



enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure of either party to insist on strict performance of any provision herein will not be deemed a waiver of any rights or remedies that either party will have and will not be deemed a waiver of any subsequent default of the terms and conditions thereof.

- 12.8.** Entire Agreement; Electronic Signatures. This Agreement and all agreements and orders referenced herein or posted at [www.brandlive.com/legal](http://www.brandlive.com/legal), including without limitation the Order Form, Service Descriptions, AUP, and any amendments to such agreements and terms is the entire agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous agreements, negotiations, and communications, whether written or oral, regarding such subject matter. Brandlive expressly rejects all terms contained in Client's purchase order documents, or in electronic communications between the parties, and such terms form no part of this Agreement. The parties agree that electronic signatures, whether digital or encrypted, or Client's click-through acceptance of this Agreement, or any amendment of this Agreement, give rise to a valid and enforceable agreement.
- 12.9.** Brandlive may amend this Agreement by posting a revised version to [www.brandlive.com/legal](http://www.brandlive.com/legal) or to Authorized Users at the Services log-in prompt. The Client is responsible for regularly checking the website for any amendments. The Client accepts the revised version of this Agreement by either (a) click-through acceptance at the Services log-in prompt, (b) execution of an Order Form incorporating the revised version, or (c) continued use of the Services for 30 days following the earliest notice of such revised version.