

FPW MEDIA

TERMS AND CONDITIONS

1. Definitions:

1.1. **Agreement:** FPW's current terms and conditions, the parties' written engagement letter, FPW's current hourly rates, and other written and mutually agreed to documents between the parties describing the terms of their agreement. FPW's terms and conditions and hourly rates may be updated from time to time by FPW. Client agrees to these updates and understands its continued use of FPW's services is its agreement to these updates.

1.2. **FPW:** Garrity Ventures, LLC dba FPW Media.

1.3. **Client:** Entities and individuals who are receiving services or goods from FPW.

1.4. **Services.** The services and products described in the initial engagement letter and/or as otherwise agreed to by the parties (Services).

2. **Services.** FPW will provide the Services to the Client.

3. **Compensation & Expenses.** The Services will be billed to Client based on FPW's then-current hourly rates or as provided for in the initial engagement letter. Unless otherwise stated in the engagement letter, work will be billed monthly, and invoices are due upon receipt. Late payments will be subject to a monthly interest rate of 1.5% accruing

ten days after payment is due. In the event of delayed payment, FPW, at its discretion, can stop all or some of the work for Client. Generally, any out-of-pocket expenses, including travel, will be billed directly to Client. FPW may, but shall not be required to, advance certain expenses on behalf of Client, and Client agrees to pay, in advance, any expenses that FPW claims reasonably necessary in advance, upon request of FPW.

4. **Independent Contractor Relationship.** FPW will be an independent contractor of Client. Each party will comply with all laws applicable to its respective business, including obtaining and maintaining all of the licenses, permits, registrations, and other governmental authorizations required to conduct such party's business and, with respect to FPW, to perform the Services.

5. **Nonsolicitation of FPW Employees.** While FPW is providing the Services and for a period of one (1) year following the last day FPW provides Services to Client, Client, including any owner, employee of Client, or any entity under common control of Client will not directly or indirectly: (a) solicit any employee of FPW to become an employee or independent contractor of Client or any other person; or (b) suggest to an employee of FPW that the employee should reduce or terminate the employee's relationship with FPW.

6. **Intellectual Property Rights.** FPW owns and may develop certain software know-how, trade secrets, stock and source materials (including those source materials created under this Agreement), programs and documentation (including certain processes, designs, and specifications), and other materials within or outside the scope of this Agreement (the "FPW IP"). FPW owns all right to, title to, and interest in the FPW IP; provided, however, that to the extent that the FPW IP is incorporated into the Services, FPW grants Client a perpetual, irrevocable, worldwide, fully paid license to use the FPW IP as specifically incorporated into the

Services and for no other reason. Unless expressly provided for in writing, FPW will own—and Client will have no right in or to (other than access incidental to the other services provided herein)—any software developed by FPW, or any underlying source code or other rights related thereto. Client represents and warrants that it will not sell, lease, or license to any third-party the right to use any FPW IP without the written consent of FPW.

7. Confidentiality.

7.1. Confidential Information. In connection with this Agreement, Client (for the purpose of this Section 6, the “Disclosing Party”) may disclose or make available Confidential Information to FPW (for the purpose of this Section 6, the “Receiving Party”). Subject to Section 6.2, “Confidential Information” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party marks as confidential or proprietary which may include information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, clients, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case, whether or not marked, designated, or otherwise identified as “confidential.”

7.2. Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure

prior to such information’s being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its representatives’ noncompliance with this Agreement; (c) was or is received by the Receiving Party on a nonconfidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

7.3. Confidentiality and Use. The Receiving Party recognizes and agrees that the Confidential Information of the Disclosing Party is critical to the Disclosing Party’s business and that Client would not enter into this Agreement without assurance that such information and its value will be protected as provided in this Section 6 and elsewhere in this Agreement. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for so long as Confidential Information is in its possession:

7.3.1. Not access or use, or permit the access or use of, Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement (except as expressly provided herein);

7.3.2. Except as may be permitted by and subject to its compliance with any

applicable laws, not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 6.3; and (iii) are bound by confidentiality obligations at least as protective as the terms set forth in this Section 6.3;

7.3.3. Safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;

7.3.4. Ensure its representatives' compliance with, and be responsible and liable for any of its representatives' noncompliance with, the terms of this Section 6; and

7.3.5. Notify the Disclosing Party in writing promptly of any unauthorized disclosure or use of the Disclosing Party's Confidential Information

and cooperate with the Disclosing Party to protect the confidentiality and ownership of all Intellectual Property Rights, privacy rights, and other rights therein.

7.4. Compelled Disclosures. If the Receiving Party or any of its representatives are compelled by applicable law to disclose any Confidential Information, then, to the extent permitted by applicable law, the Receiving Party shall promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement. If such an event occurs, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

7.5. Return or Destruction of Confidential Information. Subject to any contrary obligations under applicable law and, upon a Disclosing Party's written request or within thirty (30) days of termination or expiration of this Agreement or, if applicable, expiration of any additional term in which FPW provides the Services to Client, the Receiving Party shall, as directed by the Disclosing Party, return or destroy all of the Disclosing Party's Confidential Information then possessed, in any form, and, upon request, provide a written statement to the Disclosing Party certifying that it has complied with the requirements of this Section 6.5. In the event any applicable law prevents a Receiving Party from returning or destroying the Disclosing Party's Confidential Information, the Receiving Party shall retain the minimum Confidential Information necessary, apply the confidentiality, security, and other requirements of this

Agreement to such Confidential Information for as long as it is maintained; and promptly return or destroy the Confidential Information as soon as the applicable law permits it to do so.

8. Termination. The Services will terminate upon the earliest to occur of the following:

8.1. Upon completion of the Services.

8.2. Upon thirty (30) days' written notice by either party to the other party;

8.3. Termination for Cause. Either party may terminate this Agreement by written notice to the other party in the event that the other party fails to perform any material obligation or is otherwise in default with respect to any material term or condition of such party under this Agreement and such failure or default continues unremedied for a period of fourteen (14) days following the delivery of a written notice by the non-breaching party to the party in breach. Any notice of breach must specify the nature of the breach in reasonable detail.

8.4. This Agreement may be terminated immediately by either party upon written notice to the other party as follows:

8.4.1. If the other party engages in any act that would subject either party to criminal liability in the reasonable opinion of a party;

8.4.2. Upon dissolution of the

other party or if the other party ceases doing business; or

8.4.3. Upon the following: (a) the insolvency of a party; (b) the filing of a voluntary or involuntary petition by or on behalf of a party under federal bankruptcy law; (c) a party entering into an agreement with creditors for the liquidation of its assets; or (d) the appointment of a receiver or trustee to take charge of all the assets of a party.

9. Representations and Warranties.

9.1. Mutual Representations and Warranties. Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to bind the underlying entity/individual and enter into this Agreement and perform its obligations hereunder; and (c) the execution of this Agreement by its representative whose signature is set forth at the end of the Engagement Letter or who has otherwise agreed to the Services has been duly authorized by all necessary corporate or organizational action of such party. Each party shall comply with all applicable laws as they concern this Agreement or the subject matter hereof.

9.2. DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 9, THE GOODS AND SERVICES ARE

PROVIDED AS IS. FPW HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF. THIS DISCLAIMER INCLUDES DISCLAIMING THE WARRANTY OF MERCHANTABILITY.

10. Limitations of Liability.

10.1. Exclusion of Indirect Damages. In no event will FPW be liable under this Agreement for any consequential, incidental, indirect, exemplary, special, or punitive damages.

10.2. Cap on Monetary Liability. In no event shall FPW's liability under this Agreement exceed the aggregate fees paid under this Agreement in the three (3) months preceding the event giving rise to the claim.

11. **Indemnification.** Client shall indemnify, defend, and hold harmless FPW and its directors, officers, employees, and agents from and against any and all Losses arising out of any claim by a third party in connection with the use of any Work Product, the results of any Services provided hereunder, or the gross negligence or willful misconduct of Client. FPW shall have the right, at its expense and option, to participate in the defense and/or settlement of any such claim or action. In no event shall Client settle any suit or claim imposing any liability or other obligations on FPW without FPW's prior written consent.

12. General Provisions.

12.1. Force Majeure. Neither party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent that such failure or delay is caused by any: Acts of God, flood, fire, earthquake, or explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; cyber-attacks or intrusions, strikes, labor stoppages or slowdowns, or other industrial disturbances; or passage of Law or any action taken by a governmental or public authority, including imposing any export or import restriction, quota, or other restriction or prohibition (each of the foregoing, a "Force Majeure Event"); in each case, provided that (a) such event is outside the reasonable control of the affected party; (b) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

12.2. Marketing. During and after the term of this Agreement, Client grants FPW the right to use Client's name, associated trademarks, and Work Product on FPW's website and for other marketing purposes.

12.3. Non-Exclusivity. Client recognizes that FPW may from time to time perform services similar to those performed for Client for other persons, and this Agreement shall not

prevent FPW from performing such similar services for such other persons.

- 12.4. No Assignment. Neither party may assign or delegate any of its rights or obligations under this Agreement to any person without the prior written consent of the other party, which may be withheld by such party in its sole discretion; provided that FPW is authorized to hire subcontractors to perform services at its discretion.
- 12.5. Binding Effect. This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 12.6. Amendment. Except as provided for herein, this Agreement may be amended only by a written document signed by both parties.
- 12.7. Notices. All notices and communications in connection with this Agreement must be given in writing and will be transmitted by electronic mail, to the appropriate party at the address listed on the engagement letter. Any notice so transmitted will be deemed effective on the date it is received (including as evidenced by a Delivery Receipt from the sending party). Either party may, by written notice, designate a different address for purposes of this Agreement.
- 12.8. Waiver. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- 12.9. Severability. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.
- 12.10. Termination & Survival. The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.
- 12.11. Attachments. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement.
- 12.12. Remedies. The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 12.13. Governing Law. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.
- 12.14. Mandatory Arbitration. Any dispute related to the terms of this Agreement shall be settled by binding arbitration before a single arbitrator in Eugene, Oregon, subject to the following conditions:
- 12.14.1. If the parties agree on an arbitrator, the arbitration

will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. Each arbitrator will be an attorney knowledgeable in the area of business law.

12.14.2. The arbitration will be conducted in accordance with the procedures set forth in ORS 36.600 through ORS 36.740.

12.14.3. The resolution of any dispute, controversy, or claim as determined by the arbitrator will be binding on the parties. Judgment on the award of the arbitrator may be entered by any party in any court having jurisdiction.

12.14.4. A party may seek from a court an order to compel arbitration or any other interim relief or provisional remedies pending an arbitrator's resolution of any dispute, controversy, or claim. Any such action, suit, or proceeding will be litigated in courts located in Lane County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal

court located in Lane County, Oregon.

12.14.5. A party may seek from a court an order to compel arbitration or any other interim relief or provisional remedies pending an arbitrator's resolution of any dispute, controversy, or claim. Any such action, suit, or proceeding will be litigated in courts located in Lane County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Lane County, Oregon.

12.15. Attorney's Fees. If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

12.16. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral,

between the parties with respect to the subject matter of this Agreement.

- 12.17. Signatures. This Agreement may be signed in counterparts. A fax or e-mail transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax or e-mail transmitted signature page by delivering an original signature page to the requesting party.