

## AUCTANE MAIN SERVICES AGREEMENT

This Main Services Agreement (this "**Agreement**") is an agreement between the applicable Auctane Contracting Entity specified in Section 13 ("**Auctane**") and Company, each individually referred to as a "**Party**" and collectively as the "**Parties**". "**Company**" means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement. Any references herein to this "**Agreement**" means this Main Services Agreement, together with any and all Program Exhibits and exhibits, schedules, and addenda hereto and thereto.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE OR (2) EXECUTING A PROGRAM EXHIBIT THAT REFERENCES THIS AGREEMENT, COMPANY AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "COMPANY" SHALL REFER TO SUCH ENTITY. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT.

This Agreement was last updated on May 1, 2023. This Agreement is effective between Auctane and Company as of the date Company accepts this Agreement (the "**Effective Date**").

### 1. **SERVICES**

1.1 The services to be provided under this Agreement, and related terms and conditions, are specified in one or more exhibits hereto (each a "**Program Exhibit**" and, collectively, the "**Program Exhibits**"), which are incorporated herein by reference.

1.2 Any services to be rendered, or obligations to be performed, by Auctane under this Agreement may be performed by Auctane directly or by any of Auctane's Affiliates. "**Affiliate**" shall mean: (i) with respect to Auctane, Auctane, Inc. or a subsidiary (whether or not consolidated) of Auctane, Inc.; and (ii) with respect to Company, (A) any person or entity that is controlled by, controls, or is under the same control as Company; (B) a subsidiary (whether or not consolidated) of Company; (C) an entity of which Company is a subsidiary (whether or not consolidated); (D) a person or entity which has a material ownership interest in Company or which manages a significant portion of the Company's day-to-day operations; or (E) an entity in which Company has a material ownership interest or which has a significant portion of its day-to-day operations managed by Company.

### 2. **PAYMENTS**

2.1 Each Party will make payments to the other Party in accordance with the terms and conditions set forth in the applicable Program Exhibit. Each Party shall bear all its own costs and expenses in connection with this Agreement unless otherwise expressly agreed to in writing by the other Party.

2.2 Company shall be responsible for the payment of all sales, use, or other taxes owed on products, services or taxable items purchased or utilized, regardless of whether such taxes are collected by Auctane at the time of purchase.

### 3. **RESPONSIBILITIES; RESTRICTIONS.**

3.1 Unless otherwise agreed in a Program Exhibit, each Party shall.

(a) be responsible for all aspects of the development, operation, and maintenance of its website, its product and service offerings, and all related materials, including, but not limited to, customer service and support, order entry, payment processing, technical operations of its website, all related equipment, and the accuracy and propriety of related materials;

(b) conduct all activities hereunder in accordance with the prevailing industry standards and in compliance with all applicable laws, rules, regulations, and directives in all material respects, including, but not limited to, those relating to data privacy, email marketing and "spamming";

(c) not knowingly use or transmit any viruses, "malware," or "spyware" (including, but not limited to, pop-up banners that hide banners that are displayed on a website, icons placed beside keywords found in text that if clicked will take the visitor to another website, or other similar practices or techniques);

(d) not make any false or misleading representations or statements with respect to the other Party or its Affiliates;

(e) not engage in any other practices which may affect adversely the credibility or reputation of the other Party or its Affiliates, including but not limited to, using any website in any manner or having any content on any website that promotes sexually explicit materials, violence, discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age, and/or any illegal activities;

(f) not violate any intellectual property or other proprietary rights of any third party in performing its obligations under this Agreement;

(g) comply with all marking requirements, including, but not limited to, patent, copyright, trademark, and confidentiality notices, issued by the other Party from time to time;

(h) not, and shall not allow or authorize others to, reverse engineer, reverse compile or disassemble the other Party's or its Affiliates' products, other than in a manner specifically allowed by applicable law notwithstanding any contractual restrictions;

(i) not, and shall not allow or authorize others to, use the products or services provided by the other Party or its Affiliates hereunder in any manner that interferes with or disrupts the integrity or performance of such products or services;

(j) if such Party is a "business associate" or "covered entity" as defined in 45 C.F.R. 160.103, not, and shall not allow or authorize others to, use the products or services provided by the other Party or its Affiliates hereunder to store or transmit any "protected health information" as defined in 45 C.F.R. 160.103, unless expressly agreed to otherwise in writing by the other Party; and

(k) not, and shall not allow or authorize others to, use the marks of the other Party or its Affiliates in keyword search terms or in any manner other than as expressly allowed by this Agreement without the prior written consent of such other Party in each instance.

#### **4. MARKETING AND PROMOTIONAL ACTIVITIES**

4.1 Each Party shall (i) not release any advertising, sales or promotional materials, press releases, statements, or other publicly available materials or engage in any other marketing or promotions which refer to this Agreement, the other Party, its Affiliates, or their respective products or services, including but not limited to through online or offline methods, such as email, fax, broadcast, telemarketing, SMS/text message, social media, or video platforms, without the prior written consent of the other Party in each instance; (ii) to the extent applicable, ensure that its personnel are knowledgeable regarding the proper demonstration, use, and sale of the other Party's or its Affiliates' products or services associated with the relevant Program Exhibit(s) as well as the relevant specifications, features and advantages of such products and services, and that its personnel comply with any quality standards regarding sales, service, and support that the other Party may make available from time to time; (iii) to the extent applicable, make reasonable efforts to ensure that any pricing or other marketing information provided to any of its customers or otherwise or any other publicly available materials, online or offline, are accurate to its best knowledge; and (iv) not engage in any marketing or promotional activity related to the other Party, its Affiliates or their respective products or services in any unauthorized area, location, territory, or jurisdiction, as defined by the other Party. Company consents to its identification as a customer of Auctane on Auctane's and its Affiliates' websites, and in other marketing materials distributed by Auctane and its Affiliates, including press releases, case studies, and similar publications, and the display and use of Company Marks (as defined below) in connection with such activities.

4.2 Without limiting the foregoing, neither Party shall: (i) promote or advertise the other Party or its Affiliates on coupon, deal, or discount sites or on GTP/Get Paid to Click or other incentivized sites, or display any offer code or website link on a public-facing page or through the use of a "click to display" offer code; (ii) use its website link directly in any pay-per-click advertising; (iii) purchase search engine or other pay-per-click keywords (such as Google Ads), trademarks, or domain names that use the other Party's Marks or any variations or misspellings thereof that may be deceptively or confusingly similar to the other Party's Marks; (iv) create or participate in any third party networks or sub-

affiliate networks without the express written permission of the other Party; (v) use or encourage any means of delivering fraudulent traffic, including but not limited to use of bots or toolbar traffic, cookie stuffing, or use of false or misleading links; or (vi) mask its referral sites or use deceptive redirecting links.

4.3 In the event that Company has a list of emails where the individuals on the list have expressly elected to receive emails from Company (an “**Opt-in List**”), Company may make a written request to Auctane to send emails regarding the offering of Auctane and its Affiliates to the individuals on the Opt-in List (and Auctane may, in its sole discretion, allow Company to send such emails).

4.4 Unless Company has secured the applicable third party’s consent first, Company will not email any third party whose email address Company has received from Auctane or its Affiliates. In addition, Company shall (i) not send any email regarding Auctane or its Affiliates to any individual or entity that has not requested such information; (ii) always include Company’s contact information and “unsubscribe” information in any email regarding Auctane, its Affiliates or their respective products or services; and (iii) not imply that such emails are being sent on behalf of Auctane or its Affiliates.

4.5 From time to time, a Party (the “**Originating Party**”), in its sole discretion, may make available to the other Party various marketing or promotional materials (“**Promotional Marketing Materials**”) in connection with this Agreement. The Promotional Marketing Materials are provided on an “AS IS” and “AS AVAILABLE” basis, WITH ALL FAULTS and WITHOUT WARRANTY of any kind. Nothing contained in any Promotional Marketing Materials shall in any way be deemed a representation or warranty of the Originating Party or any of its Affiliates. As between the Parties, the Promotional Marketing Materials shall at all times be the sole and exclusive property of the Originating Party, and no rights of ownership shall at any time vest with the other Party even in such instances where such other Party has been authorized to make changes or modifications to the Promotional Marketing Materials. During the Term, the receiving Party may display and use the Promotional Marketing Materials solely for the purpose of marketing and promoting the Originating Party’s or its Affiliates’ products and services, to the extent permitted by the Originating Party. A Party shall not alter, amend, adapt, or translate the Promotional Marketing Materials without the Originating Party’s prior written consent. The Party receiving Promotional Marketing Materials under this Section shall cease any and all use and display of the Promotional Marketing Materials immediately upon written request by the Originating Party.

## **5. PROPRIETARY RIGHTS**

5.1 Except as expressly provided in this Agreement, as between the Parties, each Party shall retain all rights, title, and interest in and to the products and services provided by such Party under this Agreement, including all hardware, software, and other components of or used to provide such products and services (if any) and all works or materials created by or on behalf of such Party in connection with this Agreement (if any), and in each case, including all related intellectual property rights. Except as expressly licensed in this Agreement, this Agreement does not transfer any intellectual property rights between the Parties, and no license or other rights in or to a Party’s or its Affiliates’ products, services, or intellectual property is granted under this Agreement, and all such licenses and rights are expressly reserved.

5.2 Auctane, on behalf of itself and its Affiliates, grants to Company the non-exclusive, non-transferable, non-sublicensable, revocable, limited right to use the trademarks and logos of Auctane and/or its Affiliates (collectively, the “**Auctane Marks**”) solely in connection with fulfilling Company’s obligations and exercising Company’s rights under this Agreement. All such uses of the Auctane Marks must be pre-approved in writing by Auctane before any publication thereof, and Company agrees to use the Auctane Marks only in the manner approved by Auctane. The permission granted herein shall end upon the termination or expiration of this Agreement and may be earlier terminated by Auctane in its sole discretion upon written notice. Company acknowledges and agrees that, as between the Parties, Auctane is the owner of the Auctane Marks, and Company shall take no action inconsistent with Auctane’s ownership in the Auctane Marks. Company shall not, now or in the future, apply for or contest the validity of any Auctane Marks or apply for or use any term, mark, or logo that may be confusingly similar to any Auctane Marks.

5.3 Company grants to Auctane and its Affiliates the non-exclusive, non-transferable, non-sublicensable, revocable, limited right to use Company’s trademarks and logos (collectively, the “**Company Marks**”) solely in connection with fulfilling their respective obligations and exercising their respective rights under this Agreement. All such uses of the Company Marks must be pre-approved in writing by Company before any publication thereof, and Auctane agrees to use the Company Marks only in the manner approved by Company. The permission granted herein shall end upon the termination or expiration of this Agreement and may be earlier terminated by Company in its sole discretion upon written notice. Auctane acknowledges and agrees that, as between the Parties, Company is the owner of the Company Marks, and Auctane shall take no action inconsistent with Company’s ownership in the Company

Marks. Auctane shall not, now or in the future, apply for or contest the validity of any Company Marks or apply for or use any term, mark or logo that may be confusingly similar to any Company Marks.

5.4 If a Party or any of its Affiliates receiving a license under this Agreement (collectively, the “**Licensee**”), in the course of performing its obligations under this Agreement, acquires any goodwill in any of the trademarks and logos of the other Party or its Affiliates, all such goodwill will automatically vest in the Party granting the license (the “**Licenser**”) when such acquisition of goodwill occurs, as well as at the expiration or termination of this Agreement, without any separate payment or other consideration of any kind to Licensee, and Licensee agrees to take all such actions necessary to effect such vesting.

5.5 Company grants to Auctane and its Affiliates a worldwide, perpetual, irrevocable, fully paid-up, royalty-free, transferable, sublicensable (through multiple layers), assignable license to implement, use, modify, commercially exploit, and incorporate into their services or products any suggestion, enhancement request, recommendation, correction, or other feedback provided by Company, its Affiliates, or any third parties acting on Company’s behalf. Auctane and its Affiliates also reserve the right to seek intellectual property protection for any features, functionality, or components that may be based on or that were initiated by suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Company, its Affiliates, or any third parties acting on Company’s behalf. Company also grants to Auctane and its Affiliates a non-exclusive, worldwide, perpetual, irrevocable, fully paid-up, royalty-free, transferable, sublicensable (through multiple layers), assignable license to use any statistical and other information and data transmitted, derived or gathered in connection with this Agreement to create a version or versions of such information and data (the “**Aggregate Data**”) and to disclose and otherwise use the Aggregate Data for any legitimate business purpose including data and market analysis and aggregation, general reporting, and service optimization. Auctane shall own all right, title, and interest, including all intellectual property rights, in and to the Aggregate Data, and the Aggregate Data shall not be considered Confidential Information of Company.

## **6. CONFIDENTIALITY**

6.1 “**Confidential Information**” means all information or data (in written, electronic, or other form, or oral information) that: (i) is related to, owned, or controlled by a Party (the “**Disclosing Party**”) or its Affiliates, valuable to the Disclosing Party or its Affiliates, and not generally known or readily available through legal means to the other Party (the “**Receiving Party**”), including without limitation any trade secrets, project files, product or system designs, drawings, sketches, processes, new or existing product development, production characteristics, testing procedures and results thereof, engineering evaluations and reports, business plans, financial statements, projections, operating forms (including contracts), operating procedures, payroll data, personnel records, non-public marketing materials, plans and proposals, customer lists and information (including contact and usage information), target lists for new clients and information relating to potential clients, software, computer programs, training manuals, policy and procedure manuals, price, cost, and postage rate information, business strategy, and any information received under an obligation of confidentiality to a third party; or (ii) pertains to the terms and conditions of this Agreement and the business arrangements described herein.

6.2 Notwithstanding the foregoing, “Confidential Information” shall not include, and this Agreement imposes no obligation with respect to, any information that (i) is or becomes generally publicly available through no act of the Receiving Party or its Affiliates or Representatives (as defined below); (ii) is already known to, or in the possession of, the Receiving Party or its Affiliates or Representatives at the time of the disclosure, without any obligation of confidentiality; (iii) is independently developed by the Receiving Party or its Affiliates or Representatives, without the use of the Disclosing Party’s Confidential Information; (iv) is received by the Receiving Party or its Affiliates or Representatives from a third party under no obligation of confidentiality to the Disclosing Party; (v) is disclosed publicly under operation of law; or (vi) is disclosed publicly by the Receiving Party with the Disclosing Party’s prior written approval.

6.3 Except as otherwise authorized by the Disclosing Party, the Receiving Party shall not disclose any Confidential Information of the Disclosing Party to third parties other than to its Affiliates and their respective directors, managers, members, officers, partners, employees, agents, representatives, advisors, controlling persons, contractors and consultants (collectively, “**Representatives**”) who need to know such Confidential Information for the Receiving Party to perform its obligations under this Agreement and who are bound pursuant to a written agreement or otherwise by confidentiality obligations with the Receiving Party that are no less restrictive than those set forth in this Agreement. The Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose except as necessary to perform its obligations under this Agreement or as otherwise permitted under this Agreement. The Receiving Party shall use the same procedures and controls the Receiving Party employs to protect its own confidential information of like importance, but in no event less than reasonable means, to preserve the confidentiality, and avoid

the unauthorized use or disclosure, of the Disclosing Party's Confidential Information. The Receiving Party shall be responsible for any breach of this Agreement by its Affiliates or Representatives.

6.4 The Receiving Party may disclose Confidential Information in response to a valid order of a court or authorized governmental agency; provided that notice, to the extent legally permitted, is promptly given to the Disclosing Party so that a protective order or other appropriate relief may be sought and other efforts employed to minimize the required disclosure. The Receiving Party shall use reasonable efforts to cooperate with the Disclosing Party in seeking the protective order or other relief and engaging in such other efforts. In the event that such protective order or other relief is not obtained, the Receiving Party shall disclose only that portion of the Confidential Information which the Receiving Party's counsel advises is legally required to be disclosed. The disclosure of Confidential Information under this Section shall not be construed as a public disclosure of such Confidential Information by a Party for any purpose whatsoever.

6.5 The Receiving Party acknowledges that the Disclosing Party may suffer irreparable damage in the event of any breach of this Section 6 and, accordingly, shall have the right to take all reasonable steps to protect its Confidential Information, including, but not limited to, seeking injunctive relief and any other remedies as may be available at law or in equity in the event the Receiving Party or its Affiliates or Representatives does not, or threatens not to, fulfill its obligations under this Section 6.

6.6 As between the Parties, Confidential Information shall at all times remain the property of the Disclosing Party. Except as expressly set forth herein, this Agreement does not grant any Party or its Affiliates any rights in or to the Confidential Information of the other Party. The disclosure of Confidential Information to the other Party hereunder shall not be construed as a public disclosure of such Confidential Information by a Party for any purpose whatsoever.

6.7 Upon the Disclosing Party's written request, the Receiving Party shall promptly destroy or deliver to the Disclosing Party all Confidential Information received from the Disclosing Party, including any documents, notes, or other physical embodiments of, reflecting, or derived from the Confidential Information (including any copies thereof), that are in the Receiving Party's or its Affiliates' or Representatives' possession or control. Notwithstanding the foregoing, the Receiving Party shall be permitted to retain copies of the Confidential Information (i) in order to comply with any applicable law, court, regulation or regulatory authority, (ii) for dispute resolution purposes, and/or (iii) in electronic form on the Receiving Party's automatic backup or archival systems provided that such backed up or archived information is destroyed in accordance with the Receiving Party's records retention policy. Any retained information shall be maintained in confidence and utilized solely for the purpose for which it retained. Notwithstanding any such return or destruction of Confidential Information, the Receiving Party and its Affiliates and Representatives will continue to be bound by their obligations of confidentiality hereunder.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 Each Party hereby represents and warrants to the other Party that it has the requisite authority to enter into this Agreement and to perform all of its obligations hereunder, and that this Agreement has been duly and validly executed and delivered by such Party and constitutes a legal, valid, and binding obligation, enforceable against such Party in accordance with its terms.

7.2 Each Party hereby represents and warrants to the other Party that it will comply with all applicable laws, rules, regulations, directives (and governmental obligations) that relate to data protection and security, privacy and the use of information relating to individuals and/or the information rights of individuals, which may include, but may not be limited to the General Data Protection Regulation (EU) 2016/679 (GDPR) and the California Consumer Privacy Act of 2018.

## **8. DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY**

8.1 TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, WITH RESPECT TO ANY ASPECT OF ITS OR ITS AFFILIATES' PERFORMANCE HEREUNDER, THE PROGRAM EXHIBIT(S), OR PRODUCTS OR SERVICES, AND EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING, OR TRADE USAGE. EACH PARTY UNDERSTANDS AND ACKNOWLEDGES THAT THE PRODUCTS OR SERVICES PROVIDED HEREUNDER MAY NOT SATISFY THE REQUIREMENTS OF SUCH PARTY, ITS AFFILIATES OR ANY THIRD PARTY. IN ADDITION, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY THAT ANY ASPECT OF ITS OR ITS AFFILIATES' PERFORMANCE

HEREUNDER OR THE PRODUCTS OR SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR FREE, OR FREE FROM HARMFUL COMPONENTS, AND NEITHER PARTY NOR ITS AFFILIATES WILL BE LIABLE FOR THE CONSEQUENCES OF ANY SUCH INTERRUPTIONS, ERRORS, OR HARMFUL COMPONENTS. COMPANY ACKNOWLEDGES AND AGREES THAT AUCTANE AND ITS AFFILIATES EXCHANGE CERTAIN INFORMATION FROM THIRD PARTIES AND DO NOT GUARANTEE THE ACCURACY OF INFORMATION OR SERVICES RECEIVED BY COMPANY OR ITS AFFILIATES FROM THIRD PARTIES, INCLUDING THE ACCURACY OF RATES, DELIVERY INFORMATION, DELIVERY OF ITEMS, OR BUSINESS REQUIREMENTS OF ANY THIRD PARTY.

IN ADDITION, COMPANY ACKNOWLEDGES AND AGREES THAT AUCTANE AND ITS AFFILIATES WILL NOT BE RESPONSIBLE FOR (A) THIRD-PARTY API AVAILABILITY OR PERFORMANCE, INCLUDING WITHOUT LIMITATION ANY CARRIER APIS, OTHER LABEL PROVIDER APIS, ORDER APIS, TRACKING APIS, AND INSURANCE APIS, (B) CORRECTING ANY ERRORS NOT REPRODUCIBLE ON THE APPLICABLE PRODUCT OR SERVICE PROVIDED BY AUCTANE OR ITS AFFILIATES, (C) ERRORS CAUSED BY (I) COMPANY'S FAILURE TO IMPLEMENT ALL UPDATES OR UPGRADES TO THE APPLICABLE PRODUCT OR SERVICE PROVIDED BY AUCTANE OR ITS AFFILIATES, (II) COMPANY'S IT INFRASTRUCTURE AND ENVIRONMENT WHICH ADVERSELY AFFECT THE PRODUCTS OR SERVICES PROVIDED BY AUCTANE OR ITS AFFILIATES, (III) USE OF THE PRODUCTS OR SERVICES PROVIDED BY AUCTANE OR ITS AFFILIATES IN A MANNER FOR WHICH THEY WERE NOT DESIGNED OR AUTHORIZED BY THIS AGREEMENT, (IV) ACCIDENT, NEGLIGENCE, OR MISUSE OF THE PRODUCTS OR SERVICES PROVIDED BY AUCTANE OR ITS AFFILIATES, OR (V) OPERATION OF A VERSION OF THE PRODUCTS OR SERVICES PROVIDED BY AUCTANE OR ITS AFFILIATES THAT IS NOT THE MOST RECENT VERSION, (D) ANY FAILURE OF COMPANY'S HARDWARE, SOFTWARE, OR NETWORK, INCLUDING THE PERFORMANCE OR FAILURE OF COMPANY'S EQUIPMENT OR FACILITIES, OR BROWSER APPLICATIONS, ANY FAILURE RELATED TO COMPANY'S INTERNET SERVICE PROVIDER, OR ANY FAILURE IN DATA TRANSPORT RELATED TO COMPANY'S CONNECTIVITY TO THE INTERNET, OR (E) ANY OTHER ACTS OR OMISSIONS OF COMPANY OR PERSONS ACTING ON BEHALF OF COMPANY IN VIOLATION OF THE AGREEMENT.

8.2 IN NO EVENT SHALL EITHER PARTY (INCLUDING ITS AFFILIATES OR REPRESENTATIVES) HAVE ANY LIABILITY TO THE OTHER PARTY OR THE OTHER PARTY'S AFFILIATES WITH RESPECT TO ANY ASPECT OF THEIR PERFORMANCE HEREUNDER, THE PROGRAM EXHIBIT(S), ANY PRODUCTS OR SERVICES, OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, PROFITS, SOFTWARE, GOODWILL, OR DATA, OR COSTS OF COVER OR REPLACEMENT), EVEN IF SUCH PARTY, AFFILIATE OR REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE FORESEEN SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. EACH PARTY'S AND ITS AFFILIATES' CUMULATIVE, AGGREGATE LIABILITY TO THE OTHER PARTY AND THE OTHER PARTY'S AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY THEORY OF LIABILITY, WHETHER CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE GREATER OF (A) THE AMOUNTS PAID OR PAYABLE BY COMPANY AND ITS AFFILIATES TO AUCTANE AND/OR AUCTANE'S AFFILIATES UNDER THE APPLICABLE PROGRAM EXHIBIT DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM FOR DAMAGES OR (B) THE AMOUNTS PAID OR PAYABLE BY AUCTANE AND ITS AFFILIATES TO COMPANY AND/OR COMPANY'S AFFILIATES UNDER THE APPLICABLE PROGRAM EXHIBIT DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM FOR DAMAGES, NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. NO ACTION MAY BE BROUGHT OR ARBITRATION DEMANDED AT ANY TIME MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION OR ARBITRATION AROSE. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS IN THIS SECTION 8.2 DO NOT APPLY TO CLAIMS BASED ON: (I) FRAUD, FRAUDULENT MISREPRESENTATION, OR WILLFUL MISCONDUCT; (II) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 OF THIS AGREEMENT; AND (III) EITHER PARTY'S PAYMENT OBLIGATIONS.

8.3 Any claims or damages that Company or its Affiliates may have against Auctane shall only be enforceable against Auctane and not any other entity or its Representatives.

## **9. INDEMNIFICATION**

9.1 Each Party shall indemnify, defend and hold harmless the other Party and its Affiliates, and their respective shareholders and Representatives from all third party demands, claims, actions, causes of action, proceedings, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs, and expenses

(including reasonable fees and disbursements of counsel) arising from or relating to any actual or alleged infringement or misappropriation of any patent, trademark, copyright, or trade secret or any actual or alleged violation of any other intellectual property rights, in either case, arising from or in connection with the use, sale, offering to sell, marketing, or manufacturing of any product or service offered or provided by the indemnitor or its Affiliates under this Agreement (collectively, "**Claims**"), except where such infringement, misappropriation or violation arises out of or results from (i) the use of such product or service in combination with other products, equipment, software, or data not supplied or authorized by the indemnitor or its Affiliates, (ii) the indemnitor's or its Affiliates' compliance with designs, data, instructions, or specifications provided by the indemnitee, or (iii) the modification of such product or service by anyone other than the indemnitor or persons acting on behalf of the indemnitor.

9.2 The indemnity obligations set forth in Section 9.1 or in any Program Exhibit are contingent upon: (i) the indemnitee giving prompt written notice to the indemnitor of any such Claim(s); (ii) the indemnitor having sole control of the defense or settlement of the Claim(s) (provided that, the indemnitor shall not settle or compromise any claim that results in liability or admission of any liability or involves injunctive or equitable relief by the other Party without the other Party's prior written consent); and (iii) at the indemnitor's request and expense, the indemnitee cooperating in the investigation and defense of such Claim(s).

9.3 If use of a product or service provided by the indemnitor or its Affiliates has become, or, in the indemnitor's sole determination, is likely to become, the subject of any Claim, the indemnitor may, at its option and expense, (i) procure for the indemnitee the right to continue using the applicable product(s) and/or service(s) as set forth in the applicable Program Exhibit; (ii) replace or modify the applicable product(s) and/or service(s) to make it non-infringing; or (iii) if options (i) or (ii) are not commercially reasonable or practicable as determined by the indemnitor, terminate this Agreement. The provisions of this Section 9 state the sole, exclusive and entire liability of each Party, and constitute the other Party's sole remedy, with respect to a Claim.

## **10. TERM AND TERMINATION**

10.1 This Agreement will commence on the Effective Date and continue in full force and effect until the earlier of (i) the termination of this Agreement as set forth herein or (ii) the expiration or termination of all Program Exhibits ("**Term**").

10.2 Either Party may terminate this Agreement or any Program Exhibit by written notice if the other Party (i) commits a material breach of this Agreement or any Program Exhibit, which breach, if capable of being cured, is not cured within thirty (30) days of written notice; (ii) terminates or suspends its business; (iii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority; or (iv) becomes subject to any bankruptcy or insolvency proceeding that is not rescinded within sixty (60) days.

10.3 Except as otherwise expressly provided in this Agreement or in any Program Exhibit, upon termination of this Agreement or any Program Exhibit, (i) all rights granted to the Parties in this Agreement or such Program Exhibit, as applicable, shall immediately cease, (ii) each Party must promptly remove all links to the other Party's websites and cease using all marketing materials, Confidential Information, trademarks, logos, and any other information or materials belonging to the other Party or otherwise related to such Program Exhibit, and (iii) each Party may take any and all action necessary to disable the other Party's participation in such Program Exhibit. The termination of this Agreement shall result in the immediate termination of all Program Exhibits. The termination of a Program Exhibit shall not result in the termination of any other Program Exhibits or this Agreement.

10.4 Provisions which by their nature should survive termination or expiration in order to be given full effect, including but not limited to the provisions of Sections 5.1, 5.4, 5.5, 6, 8, 9, 10.3, 10.4, 12 and 13 of this Agreement, will survive such termination or expiration of this Agreement.

## **11. RELATIONSHIP OF THE PARTIES**

11.1 The Parties to this Agreement are independent contractors, and this Agreement does not create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties or impose any liability attributable to such a relationship upon either Party. This Agreement does not grant either Party any right, power, or authority to enter into any agreement for, or on behalf of, or to create, assume, or incur any obligation or liability of, or to otherwise bind, the other Party or the other Party's Affiliates. In no event shall either Party take any actions that would expressly or impliedly create the impression that such Party is an employee or agent of the other Party or the other Party's Affiliates. Without limiting the generality of the foregoing, neither Party has authority to make or accept any offers or representations on behalf of the other Party or the other Party's Affiliates, and neither

Party shall make any statement, whether on its website or otherwise, that reasonably may be deemed to contradict this Section.

11.2 Unless otherwise agreed in a Program Exhibit: (i) this Agreement does not create an exclusive relationship between Auctane and Company; (ii) this Agreement is not intended to restrict or prohibit a Party or its Affiliates from marketing or selling any products or services to any actual or potential customers of the other Party or the other Party's Affiliates, even if such products or services are similar to or competitive with one or more of the products or services marketed or sold by the other Party or the other Party's Affiliates; and (iii) each Party acknowledges that the other Party or the other Party's Affiliates may, directly or indirectly, (A) market or sell various products or services that are similar to or competitive with one or more of the products or services marketed or sold by such Party or its Affiliates, and (B) at any time during or after the Term, enter into relationships or arrangements with third parties on terms that may be similar to those contained in this Agreement; provided, that, in each case, such other Party and other Party's Affiliates do not breach their respective obligations under this Agreement, including without limitation, any confidentiality obligations.

## 12. MISCELLANEOUS

12.1 Any notice required under this Agreement shall be given in writing and shall be valid and sufficient if delivered: (i) on the second business day if by registered or certified mail, postage prepaid; (ii) on the same day if by hand delivery; (iii) on the next business day if by overnight courier prepaid; or (iv) on the same day if by acknowledged email. All notices to Auctane shall be sent to the applicable address specified in Section 13, and all notices to Company shall be sent to the address specified by Company in writing. Any notice of material breach hereunder shall clearly describe the material breach including the specific contractual obligation alleged to have been breached.

12.2 Neither Party may transfer, assign, or delegate any of its rights or duties under this Agreement without the prior written consent of the other Party, and any attempt to do so shall be void; provided, however, that (i) a Party may assign any of its rights or delegate any of its duties to an acquirer of all or substantially all of the equity or assets of that Party or the surviving entity in any merger, consolidation, equity exchange, or reorganization involving that Party, and (ii) Auctane may assign any of its rights or delegate any of its duties to any of its Affiliates. Notwithstanding the foregoing, if a Party is acquired by, sells all or substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other Party, then such other Party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective successors, acquirers, administrators, heirs, and permitted assigns, and is not intended for, and this Agreement shall not be construed to be for, the benefit of or enforced by any other person or entity.

12.3 This Agreement shall constitute the entire agreement between the Parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the Parties with respect thereto. This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same agreement. This Agreement may be executed and/or transmitted by the Parties by e-mail or a .pdf document or using electronic signature technology (e.g., via DocuSign, Adobe Sign, or other electronic signature technology), and, if so executed and transmitted, such agreement shall be for all purposes as effective as if the Parties had delivered a manually executed original of this Agreement. This Agreement cannot be waived, altered, amended, or modified, in whole or in part, except by a writing signed by an authorized representative of each Party. No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.

12.4 Each provision of this Agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision shall be modified to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified.

12.5 The headings of this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction of this Agreement. Each Party acknowledges and agrees that prior to executing this Agreement, such Party had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this Agreement. This Agreement shall be deemed to have been jointly prepared by the Parties hereto, and shall not be construed against any Party by reason of being deemed the primary draftsman of this Agreement.

12.6 If the performance of any part of this Agreement by either Party is prevented, hindered, delayed, or otherwise made impracticable by reason of any flood, riot, fire, pandemic, judicial or governmental action (including, but not limited to, any law, regulation, or embargo prohibiting the performance contemplated under this Agreement or the failure or refusal of a government agency to issue a license required for any performance pursuant to this Agreement), labor



disputes, act of God, or any other cause beyond the reasonable control of that Party, the Party will be excused from such performance to the extent that it is prevented, hindered, or delayed by such cause. Notwithstanding anything in this Agreement to the contrary, the Party prevented from performing under this Agreement by a force majeure event will nevertheless use commercially reasonable efforts to recommence its performance under this Agreement as soon as reasonably practicable.

12.7 Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in applicable laws and regulations. Use of the services provided under this Agreement constitutes acknowledgment of Auctane's proprietary rights in them. The services may contain other proprietary notices and copyright information which should be observed.

**13. AUCTANE CONTRACTING ENTITY; NOTICES, GOVERNING LAW, AND VENUE**

13.1 The Auctane entity entering into this Agreement (the "**Auctane Contracting Entity**"), the address to which Company should direct notices under this Agreement, the law that will apply in any dispute arising out of or in connection with this Agreement, and the courts that have exclusive jurisdiction over any such dispute or lawsuit, depend on Company's domicile, as follows:

<b>If Company is domiciled in:</b>	<b>Auctane Contracting Entity</b>	<b>Auctane Notice Address</b>	<b>Governing Law</b>	<b>Exclusive Venue</b>
U.S.A., Canada, or any other jurisdiction not listed in this table	Auctane, Inc., a Delaware corporation	4301 Bull Creek Road, Suite 300, Austin, Texas 78731, U.S.A., Attn: Legal Department, legalnotice@auctane.com	Texas and controlling U.S.A. federal law	Austin, Texas, U.S.A.
France, Germany or United Kingdom	Auctane LLC, a Texas limited liability company	4301 Bull Creek Road, Suite 300, Austin, Texas 78731, U.S.A., Attn: Legal Department, legalnotice@auctane.com	England	London, England
Australia or New Zealand	Auctane LLC, a Texas limited liability company	4301 Bull Creek Road, Suite 300, Austin, Texas 78731, U.S.A., Attn: Legal Department, legalnotice@auctane.com	Texas and controlling U.S.A. federal law	Austin, Texas, U.S.A.

Each Party agrees to the applicable governing law above without regard to choice of law or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

13.2 If Company's domicile is the U.S.A. or Canada, the following provisions shall also apply: Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the County of Travis, Texas, before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having subject matter jurisdiction. This clause shall not preclude the Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction identified in Section 13.1. The Parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure (as it exists on the effective date of this Agreement) with respect to any final award in an arbitration arising out of or related to this Agreement. In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration. If the arbitrator determines a Party to be the prevailing Party under circumstances where the prevailing Party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing Party an appropriate percentage of the costs and attorneys'

fees reasonably incurred by the prevailing Party in connection with the arbitration. The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in Section 13.1 with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).