



Professional Services Agreement

This Professional Services Agreement (“Agreement”) is made and effective as of [MONTH] [DATE], 202_ (the “Effective Date”), by and between Five & Done, LLC (“Five & Done”), located at 27201 Puerta Real, Suite 310, Mission Viejo, CA 92691, and [CLIENT NAME] (“Client”), located at [CLIENT ADDRESS].

- 1. Retention:** Client hereby retains Five & Done to provide consulting services (“Services”) in connection with Client’s project (“Project”) described in the Scope of Work. The initial specifications for the Services are described in the Scope of Work, which may be changed from time to time by the mutual written consent of the parties. Client acknowledges that any changes to the specifications may entail revised delivery schedules, fees, and costs.
- 2. Compensation:** Client agrees to pay all Five & Done fees and expenses (“Fees”) described in the Fees and Costs section of the Scope of Work. Five & Done will invoice Client in the manner described in the Fees and Costs section of the Scope of Work. Client’s failure to pay any invoice within 30 days from receipt shall be deemed a material breach of this Agreement, justifying suspension of the Services and immediate termination of this Agreement by Five & Done. Client will pay all attorneys’ fees and other expenses Five & Done incurs in the collection of any overdue amounts. Except as otherwise set forth on the Scope of Work, Client shall be solely responsible for all third-party fees and expenses, including, without limitation, any registration, license and permit fees and production-related costs under the Agreement and relevant Scope of Work.
- 3. Delays:** In the event of (i) a delay by Client in performing any obligation hereunder, (ii) a delay due to Client’s request for changes, (iii) a dispute in good faith between the parties as to whether a particular deliverable meets the relevant specifications, (iv) a delay due to any third party’s act, failure to act, or delay in performing any obligation whatsoever, or (v) any other delay incurred as a result of Client’s actions, the delivery of the remaining deliverables shall be deemed postponed for an equivalent time period. Except for delays incurred under (iii) and any delays by Five & Done, no such delay shall relieve or suspend Client’s obligation to pay Five & Done; and with respect to (iii), Five & Done may suspend performance until such dispute is resolved. In these exceptions, Client is obligated to pay fees equivalent to the billable hours encompassed in the delay to cover costs for keeping the Five & Done team idle yet still assigned to the Project.
- 4. Changes in Scope:** Client acknowledges that Five & Done has provided a detailed description of Services, as set forth in the Scope of Work. Unless otherwise agreed to in writing, any services provided by Five & Done that are outside or beyond the Services are therefore subject to additional compensation or scheduling through a formal Change Order. Five & Done shall not be obligated to perform any modified or additional services or comply with the schedule until the changes set forth in a Change Order are mutually agreed upon in writing. Five & Done may continue to perform the services in accordance with the Scope of Work until the parties agree in writing on the change in scope of work, scheduling, and fees therefore.
- 5. Client Content:** Client shall promptly provide Five & Done with materials, including, without limitation, any Client and trademarks, logos, symbols, trade names, and service marks (collectively, “Client Content”) necessary for Five & Done to provide the Services and complete the Project. Client represents and warrants that it owns all right, title and interest, including, without limitation, all intellectual property rights in and to the Client Content, or has the right to use and grant Five & Done a license to use the Client Content. Client hereby grants Five & Done a non-exclusive royalty-free (sublicenseable to perform the Services hereunder) license to use, copy, display,

prepare derivative works, and distribute the Client Content only as part of the Services. Client owns, and shall continue to own, all rights, title and interest including, without limitation, all intellectual property rights, in and to the Client Content. Client shall be solely responsible for the accuracy of Client Content, and for acquiring authorization to implement any links or plug-ins, whether or not such links or plug-ins resulted from Five & Done's contributions. If any Client Content contains material that is obscene, threatening, or malicious; or that violates any law, regulation, or any third party's proprietary, contractual, intellectual property, moral, privacy or other right; or that may otherwise expose Five & Done to civil or criminal liability, such material shall be sufficient cause for immediate termination of this Agreement by Five & Done for material breach.

6. **Five & Done Technology:** Five & Done shall own all right, title, and interest in and to all intellectual property, data, materials, inventions, designs, patents, products, technology, including, but not limited to, software and technical data, tools, development aids, methods, techniques, documents, algorithms, knowledge, know-how, code and other works contained therein, and all intellectual property associated therewith, which Five & Done owned, developed, created, conceived or improved prior or outside of providing Services to Client under this Agreement or developed, created, conceived or improved upon during the provision of Services under this Agreement (collectively, the "Five & Done Technology"). Five & Done owns, and shall continue to own, all rights, title and interest, in and to the Five & Done Technology. Nothing in this Agreement shall constitute an assignment or waiver of Five & Done's exclusive ownership of Five & Done Technology. Nothing contained herein shall authorize Client to separate the Five & Done Technology from the Project or deliverables, or to market, sublicense, modify or create derivative works of the Five & Done Technology as a stand-alone product or element. Client will not decompile or otherwise reverse engineer any of the Five & Done Technology or contribute to its decompilation or reverse engineering by any third party.

To the extent any Five & Done Technology is provided to Client as part of any deliverable under this Agreement or related Scope of Work, Five & Done grants to Client a non-exclusive, perpetual, royalty-free, non-transferable license to use, but not sell, assign or sublicense these materials, in connection with Client's use of the deliverables. Client acknowledges that the Five & Done Technology constitutes proprietary information and/or trade secrets of Five & Done that is or may be protected by U.S. copyright, trade secret and similar laws.

In addition, should the parties mutually agree, Five & Done may also require limitations, royalty-based non-perpetual licensing, or other terms and conditions, for pre-existing and proprietary Five & Done Technology that is sold as a separate product or suite of products ("Five & Done Products"). Nothing in this Agreement shall constitute an assignment or waiver of Five & Done's exclusive ownership of Five & Done Technology and Five & Done Products.

Client obtains no right to any license contained in a deliverable or Five & Done Product until such time as all Fees and Costs arising out of a Scope of Work are paid in full.

7. **Intellectual Property:** The Project and deliverables created by Five & Done, its employees and agents in connection with or during their performance of Services under this Agreement, excluding Five & Done Technology, Five & Done Products or third party software, shall be considered "works made for hire" as defined in the U.S. Copyright Laws (U.S.C. Title 17 - Copyrights) whether published or unpublished, and all rights therein shall be the property of Client. Five & Done hereby assigns, transfers and conveys to Client the entire right, title and interest in and to the copyright in all such work, if any, developed hereunder, including all preliminary versions of such work and all material incorporating such work, and all other rights associated therewith. Each party shall notify and

reasonably cooperate with the other party in enforcing the other party's intellectual property rights at the other party's cost and expense.

If applicable, Five & Done retains ownership of all rejected concepts and design directions. In addition, Five & Done is authorized to use any of the materials it prepares for Client under this Agreement, as well as any photographs, other renderings and a description of the completed deliverables to perform the Services and for promotional/marketing on Five & Done's portfolio and website, on another website and in printed materials or as otherwise approved by the Client.

- 8. Confidential Information:** Five & Done and Client shall preserve the confidentiality of all information that is confidential or proprietary to the other, both during and after the term of this Agreement, and shall not disclose such information to any third party or use any Confidential Information for any purpose other than performing its obligations pursuant to this Agreement. Five & Done and Client agree that all information provided to or obtained by the receiving party under this Agreement shall be "Confidential Information" of the disclosing party, unless such information (a) is or becomes a part of the public domain through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information; or (e) is required to be disclosed by law or valid order of a court or other governmental authority; provided, however, that the receiving party shall first have given notice to the disclosing party and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued. Confidential Information shall include, but is not limited to, (i) the terms and conditions of this Agreement, the proposal, the Scope of Work or other document of understanding between the parties, (ii) all deliverables, (iii) all software, documentation, financial, marketing, customer data, and other business information, and (iv) any other material or information that is either marked as confidential or is disclosed under circumstances that one would reasonably expect to be confidential. All Confidential Information shall remain the property of the disclosing party. Neither party will disclose or make Confidential Information available to any third party, except as specifically authorized by the disclosing party in writing. All Confidential Information, including copies in any form, shall be returned to the disclosing party upon completion or termination of this Agreement.
- 9. Indemnification:** Each party ("Indemnifying Party") shall indemnify, defend and hold harmless the other party ("Indemnified Party") from and against any and all liability, loss, damage, expense, claims or suits arising out of the Indemnified Party's use of any material furnished by the Indemnifying Party, and shall pay all expenses in connection therewith, including but not limited to attorneys' fees. Five & Done shall have no liability for any claim based upon (i) modifications to the deliverables not made by Five & Done, (ii) the combination or use of the deliverables with materials not furnished by Five & Done, if the claim would have been avoided by use of the deliverables alone, (iii) Client Content, (iv) any assertions, claims, slogans, headlines or the like ("Assertions") made about Client products or services contained in any advertising, promotional materials, or public relations materials which Client provides, prepares or uses in connection with the deliverables created hereunder or a Five & Done Product, or (v) Client's failure to properly license third party software. In the event any element of a deliverable or Five & Done Product is held to, or Five & Done believes is likely to be held to, infringe the intellectual property rights of a third party, Five & Done shall have the right, in full satisfaction of its indemnification obligations, to (i) substitute or modify the element, (ii) obtain for Client a license to continue using the element, or (iii) refund all fees paid by Client under this Agreement. Neither Five & Done nor any subcontractor, agent or employee of Five & Done shall be required to defend, indemnify and/or hold Client harmless for the violation of any rights by any

other company with which Client may contract to provide services related to or in conjunction with the Project. In addition, Client shall indemnify, defend and hold harmless Five & Done from and against any and all liability, loss, damage, expense, claims or suits arising out of (i) Five & Done's use of (a) any products, equipment, staging props or any other assets supplied by or on behalf of Client to Five & Done or instructed by Client for Five & Done to use, or (b) the location of the shoot as directed by the Client or approved by Client; or (ii) any breach of Client's representations, warranties or obligations hereunder.

The Indemnified Party will give the Indemnifying Party prompt written notice of any claim as to which these indemnification provisions apply and will cooperate with the Indemnified Party and assist in the defense of such claim at the other's expense. With respect to the defense of any claim to which these indemnification provisions apply, the Indemnifying Party, at its own expense, will have the right to select counsel of its choice and direct the defense of the claim and any settlement as it deems proper. Upon request of the Indemnified Party, the Indemnifying party will allow the Indemnified Party, at its own expense, to participate in the defense. The Indemnified Party will not enter into any settlement or compromise of any claim for which it expects to be indemnified without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld. The Indemnifying Party will not enter into any settlement or compromise of any claim without the prior written consent of the Indemnified Party, such consent not to be withheld.

- 10. Warranty and Disclaimer:** By Five & Done. Five & Done represents and warrants to Client that (i) the performance of the Services shall comply with all specifications and any performance standards agreed upon by the parties; (ii) Five & Done its personnel have the proper skill, training and background to perform the Services in a timely, competent and professional manner; and (iii) Five & Done shall comply with all laws, rules and regulations applicable to its performance of the Services.

By Client. Client represents and warrants to Five & Done that Client has all proper licenses, permissions, releases and authorizations necessary for the Services unless otherwise expressly specified in the applicable SOW.

EXCEPT FOR ANY EXPRESS WARRANTIES MADE HEREIN, FIVE & DONE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR ARISING FROM A COURSE OF DEALING OR TRADE CUSTOM, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND FIVE & DONE DISCLAIMS THE SAME. FIVE & DONE DOES NOT WARRANT OR REPRESENT AND HEREBY DISCLAIMS THAT THE DELIVERABLES OR FIVE & DONE PRODUCT WILL BE ERROR-FREE OR SECURE. FURTHER, FIVE & DONE DISCLAIMS ALL RESPONSIBILITY AND WARRANTIES IN CONNECTION WITH THE DELIVERY, CONDITION, OR USE OF ANY PRODUCTS, PROPS, EQUIPMENT, OR ANY OTHER ASSETS PROVIDED BY OR ON BEHALF OF CLIENT.

- 11. Limitation of Liability:** FIVE & DONE SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF THE PROJECT, OR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE PROJECT OR THE SERVICES, EVEN IF FIVE & DONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM AGGREGATE AMOUNT OF MONEY DAMAGES FOR WHICH FIVE & DONE SHALL BE LIABLE UNDER THIS AGREEMENT, RESULTING FROM ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY CLIENT TO FIVE & DONE FOR THE SERVICES. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF CIRCUMSTANCES CAUSE A REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE.
- 12. Term and Termination:** The term of this Agreement ("Term") shall commence on the Effective Date and remain in effect until terminated (i) automatically upon completion of the defined Services, (ii) in writing by either party for a

material breach by the other party that is not cured within 30 days following written notice of such breach, or (iii) automatically upon either party's cessation of business, dissolution, insolvency, general assignment for the benefit of creditors, or filing for relief under the provisions of the bankruptcy laws. Client may terminate this agreement upon 60 days advance notice, in writing, to Five & Done. Upon termination of this Agreement, the non-refundable commencement fee will be retained by Five & Done and Client shall immediately pay Five & Done all unpaid Fees and expenses for work completed to date (including, without limitation, all non-cancellable third-party costs and expenses). The terms, provisions, representations, and warranties contained in this Agreement that by their nature and context are intended to survive the performance thereof by either party or both parties hereunder shall so survive the completion of performance, expiration, or termination of this Agreement, including without limitation the indemnities and limitation of liability.

13. **Successors and Assigns:** The provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns, but neither party may assign its interest herein without the prior written consent of the other party, except that Five & Done may engage subcontractors to perform the Services.
14. **Governing Law:** This Agreement its execution and negotiation, and all obligations resulting here from, and all claims or causes of action arising from or related hereto (regardless of form), including without limitation obligations resulting from the Statement of Work, shall be governed by, and construed in accordance with, the laws of the State of California, without giving effect to any principle of law that would cause the application of the law of any other jurisdiction. The parties agree that the sole venue and jurisdiction for any dispute arising from this Agreement shall be the federal or state courts in Orange County, California, and each party waives any objection that any such court lacks personal jurisdiction or is an inconvenient forum.
15. **Press Releases / References:** Neither party may disclose the specific terms of this Agreement or issue a public statement or press release regarding this Agreement without the prior consent of the other party. Notwithstanding the foregoing, Five & Done may identify Client as a customer or client of Five & Done on Five & Done's website and other marketing materials.
16. **Force Majeure:** Except for Client's obligation to pay the Fees and Costs, neither party will be considered in default or liable for any delay or failure to perform any provision of this Agreement if such delay or failure arises directly or indirectly out of an act of God, acts of the public enemy, acts of civil or military authority, war, governmental regulations, acts of terrorism, civil commotions, strikes, lockouts, labor disputes, freight embargoes, quarantine restrictions, epidemics, pandemics, fires, explosions, earthquakes, floods, power blackouts, unusually severe weather conditions, insurrection, riot, acts or omissions of common carriers, and other such causes beyond the control of the party responsible for the delay or failure to perform. Each party agrees to use all reasonable efforts to enable performance under this Agreement to continue.
17. **Dispute Resolution:** Any dispute shall be settled by final and binding arbitration by one arbitrator in accordance with and subject to the rules of the American Arbitration Association. Judgment upon the award rendered in any such arbitration may be entered in any federal or state court of competent jurisdiction in Orange County, California, or application may be made to such court for a judicial acceptance of the award and enforcement, as the law of such jurisdiction may require or allow.
18. **Attorney's Fees:** In any action, proceeding, mediation, or arbitration arising out of this Agreement, the prevailing party will be entitled to recover any and all attorney's fees and costs, including expert witness fees, incurred therein.

- 19. Independent Contractor Relationship:** The parties are independent contractors. No joint venture, partnership, employment, agency or similar arrangement is created, and/or is construed to be created, and/or deemed to be created between the parties. Neither party has the right or power to act for or on behalf of the other or to bind the other in any respect other than as necessary by Five & Done to perform its obligations under the this Agreement and/or applicable Scope of Work.
- 20. Non-Solicitation of Five & Done's Employees:** The parties agree that Client will refrain from soliciting, hiring, employing, and/or entering into any contract with the current or former employees of Five & Done during the Term and for a period of one (1) year after the conclusion of the Project. The parties agree that if Client breaches this provision of the Agreement, it will be difficult to quantify the exact amount of damages, given the variable and unique nature of the Five & Done's employees' skills, experience, and familiarity with Five & Done's proprietary information. Accordingly, the parties agree that if Client breaches this provision of the Agreement, Five & Done may apply for injunctive relief, including without limitation, a temporary restraining order prohibiting Client from engaging in such activities. Alternatively, within the sole discretion of Five & Done, Five & Done may elect to be compensated by a liquidated damage sum of one hundred (100) percent of the departing employee's yearly compensation (including salary, bonuses, commissions, and benefits).
- 21. Entire Agreement:** This Agreement, together with the Scope of Work and any Change Order, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements, proposals, representations, arrangements, and understandings, written or oral. This Agreement may not be modified or extended except by a written agreement signed by an authorized representative of each party. In the case of any conflict, this Agreement will prevail over the Scope of Work and any Change Order, unless expressly provided otherwise therein.
- 22. Counterparts / Electronic Signatures:** The parties may execute any number of counterparts to this Agreement, each of which shall be an original instrument, but all of which taken together shall constitute one and the same Agreement. Signed facsimile copies or electronic copies of this Agreement shall bind the parties to the same extent as original documents.

Five & Done, LLC

Signature

Name

Title

Date

[CLIENT]

Signature

Name

Title

Date