

DIGITAL SERVICES AGREEMENT

This Digital Services Agreement governs the terms of all advertising on websites operated by and/or creative services (to the extent either are specified in the Ordering Documents) provided by Southern Glazer's Wine and Spirits, LLC or one of its affiliates (collectively, "SGWS"). This Agreement also applies to any third-party website, platform, or app where SGWS acts as a reseller of advertising or data services or upon which SGWS traffics Ads or obtains other digital services on behalf of Advertiser pursuant to a signed Insertion Order or Authorization to Buy.

By signing an Insertion Order, Authorization to Buy, or Statement of Work (each of which may be referred to as a "Ordering Document" or collectively as the "Ordering Documents") the Advertiser or Agency, as applicable is agreeing to be bound by the terms of this Digital Services Agreement (including any third-party terms incorporated herein). The party executing this Digital Services Agreement should review all aspects carefully. In the event of any conflict between this Digital Services Agreement and any Ordering Document, this Digital Services Agreement shall control but only to the extent of such conflict.

THE SERVICES ARE AVAILABLE ONLY TO INDIVIDUALS AGED 21 YEARS OF AGE OR OLDER. SITE OPERATORS DO NOT ENCOURAGE, SOLICIT, OR PERMIT VISITORS TO THE SITES WHO ARE UNDER THE AGE OF 21.

THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

1. Definitions.

- a. **"Ad"** means any advertisement submitted in connection with an Insertion Order or Authorization to Buy.
- b. **"Ad Analytics"** means the data and information regarding the traffic, link, Ad placement, and other activity related to the Ad Services on the Sites.
- c. **"Ad Content"** means the advertising materials and feed data provided to Site Operators in connection with an Ad.
- d. **"Ad Services"** means the services provided by the Site Operator for the Site where an Ad appears.
- e. **"Advertiser"** means the person or entity who signs an Insertion Order, ATB, or Statement of Work for Services or the advertiser for which Agency is the agent under an applicable Ordering Document, in each case binding the advertiser to the Agreement.
- f. **"Agency"** means the advertising agency listed on the applicable Ordering Document.
- g. **"Agreement"** means this Digital Services Agreement (including all schedules and attachments hereto), any Insertion Order, any Authorization to Buy, any Statement of Work and also expressly incorporates by reference the terms of use, terms of service, and policies of the Sites, which are available for review on the Sites. Additionally, the term

“Agreement” specifically includes (i) any agreement between SGWS and any third-party Site which governs SGWS and/or Advertiser’s conduct in using or otherwise interacting with such Site and (ii) any agreement between SGWS and any third-party engaged by SGWS to provide the Creative Services. Ads may be served using a third party server, whose terms of service may be found at <https://www.google.com/doubleclick/publishers/small-business/terms/>, and whose terms are also incorporated into this Agreement by reference.

- h. **“Authorization to Buy”** or **“ATB”** means a written or electronic order placed with SGWS authorizing SGWS to buy or otherwise activate Ads, obtain certain digital services (e.g. data analytics) or access on Advertiser’s behalf on the Sites operated by third-party Site Operators. This also includes any services which Advertiser or Agency buy from SGWS with SGWS acting as a reseller of Services on behalf of a third-party Site Operator.
- i. **“Advertiser Materials”** means any Advertiser documents, data, know-how, methodologies, software, information and other materials provided to SGWS, including computer programs, reports, specifications, and advertising content.
- j. **“Creative Services”** means creative services provided by SGWS to Advertiser as provided for in the applicable Ordering Document.
- k. **“Deliverables”** means all work product that is specifically prepared for Advertiser by or on behalf of SGWS while performing the Creative Services and is identified as a Deliverables in the applicable Ordering Document. For clarity, in the context of creative assets, the term “Deliverables” shall mean only the final production creative asset produced by SGWS. The term “Deliverable” shall not include any SGWS Pre-Existing Materials, any iterations of the creative assets other than the final asset, any Site, any third-party materials, or any items hosted on SGWS’s platforms or licenses (i.e. on SGWS’s Google Account).
- l. **“Digital Space”** means the digital space on the Sites that are made available for Ads.
- m. **“Insertion Order”** or **“IO”** means a written or electronic order (i) placed with SGWS for Ads to appear on Sites owned or controlled by SGWS or (ii) SGWS places on Advertiser’s behalf for Ads to appear on Sites.
- n. **“Intellectual Property Rights”** means all (i) patents, patent disclosures and inventions (whether patentable or not), (ii) subject to Section 6 of this Agreement, trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (iii) copyrights and copyrightable works (including computer programs), and rights in data and databases, (iv) trade secrets, know-how, and other Confidential Information (v) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- o. **“Services”** means (i) the services provided by the Site Operator for or on the Site and, includes, but is not limited to the Ad Services and (ii) the Creative Services.

- p. **“Site Operator”** means the person or entity that operates the Sites, whether SGWS or another party.
- q. **“Sites”** means websites, mobile apps, social media pages, digital tools, and other content properties on which (i) Ads appear pursuant to an Insertion Order and/or (ii) digital services (e.g. data analytics) are provided to the Advertiser.
- r. **“SGWS Pre-Existing Materials”** means all documents, data, tools, know-how, methodologies, processes, strategies, software, code libraries, platform accounts, documentation and other materials, including computer programs, creative design templates and concepts, reports and specifications, provided by, licensed to, or used by SGWS (including any third party tools or technology licensed to or used by SGWS) in connection with performing the Services or creating any Deliverables, in each case conceived, developed or acquired by SGWS prior to the commencement or independently of any Ordering Document under the Agreement.
- s. **“Statement of Work” or “SOW”** means each Statement of Work entered into by SGWS and Advertiser describing Services SGWS will provide to Advertiser, including, but not limited to Creative Services. For clarity a Statement of Work or SOW includes any order that is not an Insertion Order.

2. **Term and Termination.**

The Agreement shall be effective immediately upon Advertiser’s use of the Services or Advertiser or Agency’s execution of an Ordering Document, whichever is earlier, (the “Effective Date”) and shall continue in full force indefinitely until terminated pursuant to this Agreement or the applicable Ordering Document. SGWS or the Site Operator may suspend or terminate Advertiser’s use of the Services with or without cause or notice, including, without limitation, if the Site Operator believes that Advertiser or Agency has violated or acted inconsistently with the Agreement. In the event the Agreement is terminated, Advertiser or Agency, as applicable, will continue to be responsible for payment to SGWS for the display of Ads until their display is suspended or terminated, Creative Services provided up to the date of termination, and any unused amounts paid to SGWS will be refunded. SGWS shall be entitled to retain the full amount of commissions and other revenues to which SGWS would have been entitled had such Order Document been completed; and (ii) Advertiser and Agency shall indemnify and hold harmless SGWS from any and all losses incurred by SGWS as a result of the suspension or termination of any previously authorized Services.

3. **Fees and Expenses.**

In consideration for the provision of Services set forth on any Ordering Document, Advertiser or Agency shall pay the fees for such Services and reimburse SGWS for all expenses incurred by SGWS (including expenses for any third-party service provider engaged by SGWS to provide the Services) as set forth in the applicable Ordering Document. Advertiser or Agency shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable to SGWS. Advertiser or Agency shall pay all invoiced amounts for fees and expenses due to SGWS upon execution of the applicable Ordering Document. All payments shall be in US dollars made by check, ACH, or wire transfer. All late payments shall bear interest at the lesser of the rate of 1.5%

per month or the highest rate permissible under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid. Advertiser or Agency shall also reimburse SGWS for all reasonable costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under this Agreement or at law, SGWS shall be entitled to suspend the provision of any Services if Advertiser or Agency fails to pay any amounts when due hereunder. No refunds will be provided by SGWS unless expressly specified under this Agreement.

SGWS will place and purchase any of Advertiser or Agency's media purchases for Ad Services with third-party Site Operators as an agent for a disclosed principal, and Advertiser or Agency agrees to execute such documentation to evidence such relationship for the benefit of any third-party Site Operator. To the extent SGWS is purchasing an Ad on behalf of Advertiser on a third-party Site, SGWS will use commercially reasonable efforts to purchase such media under the principle of sequential liability, where SGWS will be held liable for payments to the media companies and other suppliers solely to the extent SGWS has been paid by Advertiser or Agency for such purchases, and SGWS will have the right to confirm with third-party Site Operators that they expressly agree to payment on such terms and will use commercially reasonable efforts to ensure that there is no joint and several liability between Advertiser or Agency and SGWS for payments to third-party Site Operator.

4. Access and Use of Services.

From time to time, and pursuant to an executed Ordering Document, SGWS may provide or make arrangements for the placement of Ads on Sites or to provide other Services. Oral agreements for Services are void and will not be considered by SGWS. Advertiser or Agency must provide accurate information in the Ordering Document and provide SGWS with Ad Content in the format required by SGWS, the Sites and Site Operator.

Except as otherwise specified in an IO or ATB, the positioning of all Ads shall be the sole and exclusive prerogative of the Site Operator. Advertiser shall not object to the placement of Ads based on the nature of any content, including other advertisements, that is made available on the Digital Space. Advertiser shall not require the exclusion or repositioning of, or amendment of, any advertisement, product or service advertised by a third party on the Digital Space. SGWS shall have no obligation to advise Advertiser of the existence or placement of any advertisement, or product or service of a third party on the Digital Space, other than as set forth in an IO.

Ads are served, at SGWS's sole discretion, on a package basis, a CPM basis, or other basis. SGWS may charge a flat rate, where Ads are served on a package basis, or charge on a CPM basis. SGWS will share or disclose to Advertiser or Agency the Ad Analytics reasonably available to SGWS. If provided, SGWS does not guarantee or warrant the Ad Analytics or the accuracy thereof. Advertiser or Agency acknowledges that third parties may cause invalid impressions on Advertiser Ads. If, during an invoice period, there is a discrepancy of 20% or more between SGWS's impression count and Advertiser or Agency's impression count through its own tracking technology, then Advertiser or Agency will notify its SGWS account representative via email which must include details surrounding the discrepancy. SGWS will investigate the discrepancy. Advertiser or Agency agrees to facilitate the investigation by providing access rights to any information or data deemed relevant by SGWS acting reasonably.

For Sites owned and controlled by SGWS, if the discrepancy is not resolved, then Advertiser or Agency's sole remedy is to make a claim to SGWS by providing email notification to Advertiser or Agency's SGWS account representative within 60 days of the disputed invoice. SGWS may issue impression credits for any unresolved discrepancy. Advertiser or Agency may pause or terminate a campaign or particular Ad at any time before SGWS places the Ad on a Site by providing notice to SGWS. The Site Operator will remove the relevant Ad(s) promptly after receiving notice from SGWS. In any event, Advertiser or Agency will remain responsible for the impressions incurred up until the Ad(s) are removed.

For Sites owned or controlled by third-party Site Operators, the parties will work in good faith to resolve any such discrepancy subject to the terms of the Agreement.

5. Creative Services.

- a. During the Term of the applicable Ordering Document, SGWS will not be required to provide any Creative Services or create any Deliverables except as specifically set forth in any such Ordering Document. Advertiser or Agency shall promptly execute any document reasonably requested by SGWS to allow SGWS to provide the Creative Services. If SGWS commences any Creative Services in the absence of an Ordering Document, the Agreement will nevertheless apply unless SGWS and Advertiser or Agency agree otherwise in a writing signed by both parties.
- b. The scope of the Services as documented in an Ordering Document shall remain unchanged, except as otherwise agreed by SGWS and Advertiser or Agency in writing and executed in accordance with this subsection. If SGWS determines that a change to the Ordering Document is required ("Changer Order") and acting in good faith SGWS and Advertiser or Agency cannot to reach an agreement on a Change Order within fifteen (15) days of being notified of such required change, SGWS may suspend or terminate the Services upon written notice and without liability.
- c. Advertiser or Agency agrees to respond promptly to any SGWS request to provide direction, information, approvals, authorizations or decisions that are necessary for SGWS to perform the Creative Services. Advertiser or Agency is responsible for ensuring that Advertiser Materials are complete and accurate in all respects. If SGWS's performance of Creative Services is prevented or delayed by any act or omission of Advertiser, Agency, or their agents, subcontractors, consultants or employees, SGWS shall not be deemed in breach of its obligations under the Ordering Document or otherwise liable for any losses sustained or incurred by Advertiser or Agency.
- d. Advertiser or Agency acknowledges that SGWS does not provide any trademark services related to intellectual property rights in connection with the Creative Services. Advertiser and Agency are solely responsible for confirming the availability and viability of all trademarks, copyrights, and other intellectual property contained in the Deliverables and for verifying that the Creative Services and Deliverables comply with all applicable laws and regulatory requirements, directives, and guidelines. The final decision as to whether to assume the risk of use of a Deliverable shall be made by Advertiser or Agency in their sole discretion. Advertiser and Agency is responsible for obtaining and maintaining all necessary licenses and consents in relation to the

Creative Services, data privacy, and SGWS's use of Advertiser Materials.

- e. Subject to Subsection 5(f) below, upon full payment of all fees and expenses to SGWS, SGWS hereby grants Advertiser a limited, non-exclusive, non-transferrable (except as expressly provided in the Agreement), non-sublicensable right to use the Deliverables for their intended purpose in connection with Advertiser's business. Notwithstanding anything to the contrary herein, Advertiser and Agency shall not, without the prior written consent of SGWS: (i) rent, lease, sublicense, sell, transfer, disclose, distribute, or otherwise make available or grant rights in or to the Deliverables, or any portion thereof, to any third party in any form and (ii) use any Deliverables, or any portion thereof, for the benefit of any third party.
- f. SGWS and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to the SGWS Pre-Existing Materials, including all Intellectual Property Rights therein. Under no circumstances does SGWS convey, in whole or in part, any Intellectual Property Rights it has or may have in the SGWS Pre-Existing Materials except as expressly provided herein. SGWS reserves the right to use SGWS Pre-Existing Materials on other engagements with other clients so long as the use does not include or incorporate Advertiser's confidential information or Advertiser's exclusive Intellectual Property Rights. SGWS hereby grants Advertiser a limited, revocable, perpetual, fully paid-up, royalty-free, non-transferable (except in accordance with the Agreement), non-sublicensable, non-exclusive, license to use, SGWS Pre-Existing Materials solely to the extent incorporated in the Deliverables and solely to the extent reasonably required in connection with Advertiser's receipt or use of the Deliverables. All other rights in and to SGWS Pre-Existing Materials are expressly reserved by SGWS.
- g. Under no circumstance shall SGWS have any liability for any user generated content or feedback in connection with the Deliverables.

6. Accounts, Usernames, and Passwords.

Use of the Services by individual users on behalf of Advertiser or Agency may require that the individual select a username and password and provide certain account information. Users must provide accurate account information. Advertiser or Agency hereby authorizes the Site Operators to send emails, text messages, and other communications regarding the Site Operators, the Ad Services, and the Sites. If an individual is accessing the Services as part of or otherwise within the scope of such individual's employment, such individual represents and warrants that they are authorized to accept and agree to this Agreement on behalf of themselves and their employer.

Advertiser and Agency are solely responsible for maintaining the confidentiality of usernames and passwords. Individual users may not authorize others to use their account, and may not share, assign or otherwise transfer an account or login information to any other person or entity. Advertiser and Agency are responsible for any and all activities that are conducted through their user accounts and for any and all users to which they give access to the Site or Services. SGWS shall be entitled to assume that an individual user presenting their username and password is, in fact, such individual. Advertiser and Agency agree to notify SGWS immediately of any unauthorized use of an account. SGWS shall have the right at any time to change, modify

or amend usernames and passwords.

7. Prohibited Uses.

Advertiser and Agency may use the Sites and Services only for lawful purposes and in accordance with this Agreement. Advertiser and Agency agree not to use the Services or Sites:

- a. In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries or any laws regarding the sale or distribution of alcohol beverages).
- b. For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise or for the purpose of selling or promoting the sale of alcohol beverages to persons under the age of 21 years.
- c. To send, receive, upload, download, use, or re-use any material that does not comply with the Content Standards set out in this Agreement.
- d. To transmit, or procure the sending of, any advertising or promotional material without the Site Operator's prior written consent, including any "junk mail," "chain letter," "spam," or any other similar solicitation.
- e. To impersonate or attempt to impersonate the Site Operator, another user, or any other person or entity (including, without limitation, by using email addresses or screen names associated with any of the foregoing).
- f. To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Sites, or which, as determined by the Site Operator in its sole discretion, may harm the Site Operator or expose them to liability.
- g. In any manner that could disable, overburden, damage, or impair the Services or Sites or interfere with any other party's use of the Services or Sites, including their ability to engage in real time activities through the Services or Sites.
- h. To use a robot, spider, or other automatic device, process, or means to access the Services or Sites for any purpose, including monitoring or copying any of the material on the Ad Services or Sites.
- i. To introduce any viruses, Trojan horses, worms, logic bombs, malware, spyware, backdoor, time bomb, drop dead device, ransomware or other material, devices, or routines that is malicious or technologically harmful.
- j. To reverse engineer or attempt to derive the source code from or create derivative works of the Services.

- k. To sublicense, distribute or pledge the Services.
- l. To access, use, or copy any portion of the Services to develop or support any product or service that is competitive with Services.
- m. To remove any identification, patent, trademark, copyright, or other notice from the Services, or use any name, mark, or designation of SGWS, or any Site Operator(s) or licensors or their respective products or services, unless expressly permitted herein or by SGWS in writing.
- n. To use the Services in connection with any activity for which may result in tangible or intangible property damage, or death or serious body injury.
- o. To attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Ad Services or Sites, the server on which the Ad Services or Sites are stored, or any server, computer, or database connected to the Ad Services or Sites.
- p. In any way that is defamatory or trade libelous.
- q. In any way that may be pornographic or obscene.
- r. To attack the Services or Sites via a denial-of-service attack or a distributed denial-of-service attack.
- s. To otherwise attempt to interfere with the proper working of the Services or Sites.
- t. In any way which violates the Agreement.

Advertiser and Agency expressly agree not to send any personal data to SGWS or any Site Operator (beyond what is necessary to create any user accounts) or otherwise require any processing of any personal data by SGWS or any Site Operator. To the extent that any party provides personal data or other protected data (beyond what is necessary to create any user accounts) to the other party, then the parties agree to execute a data processing addendum prior to the disclosure or processing of any such personal data or other protected data.

8. Intellectual Property Rights.

Title and all Intellectual Property Rights in and to the Site and the content (except for the Ad Content) on the Site(s) including any and all derivatives, changes and improvements thereof, shall remain the sole and exclusive property of applicable Site Operator. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Advertiser or Agency or any third party any Intellectual Property Rights or other right, title or interest in or to the Site(s).

Advertiser and its licensors are, and shall remain, the sole and exclusive owner of all right, title, and interest in and to the Ad Materials and Advertiser Materials, including all Intellectual Property Rights therein. Provided, that, SGWS and any Site Operator shall have a perpetual, irrevocable, worldwide license to use the Ad Content and Advertiser Materials to perform the

Services.

Notwithstanding anything to the contrary in this Agreement, the Site Operator may monitor Advertiser or Agency's use of the Site and collect and compile Aggregated Statistics (defined below). As between the Site Operator and Advertiser, all right, title, and interest in Aggregated Statistics, and all Intellectual Property Rights therein, belong to and are retained solely by the Site Operator. Advertiser agrees that the Site Operator may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Advertiser or Advertiser's confidential information. For purposes of this Agreement, "Aggregated Statistics" means data and information related to Advertiser or Agency's use of the Site that is used by the Site Operator in an aggregate and anonymized manner, including campaign performance data (e.g., CPC, CTR, Attribution) to compile statistical and performance information related to the provision and operation of the Site.

Notwithstanding anything to the contrary, if Advertiser, Agency, or any of their employees or contractors provide any ideas, suggestion(s), enhancement requests, feedback and/or recommendation(s) to the Site Operator regarding the Site or SGWS regarding its Services, including without limitation, new and/or improved features or functionality relating thereto ("Feedback"), the Site Operator is free to use and disclose such Feedback without any obligation to Advertiser or Agency or such employees or contractors and to incorporate into any existing or future products or features.

9. Ad Content Standards.

- a. Advertiser or Agency on behalf of Advertiser represents, warrants and agrees that Advertiser is the exclusive owner of Ad Content, Advertiser Materials, and/or it has all rights, licenses, consents and releases necessary for the Ad Content and Advertiser Materials, including the right to grant all of the rights and licenses in this Agreement without the Site Operator incurring any third party obligations or liability. Advertiser further represents, warrants, and agrees that the Ad Content and Advertiser Materials does not infringe, misappropriate or violate a third party's Intellectual Property Rights, a third party's rights of publicity or privacy, or any other law.
- b. Advertiser and Agency authorizes the Site Operators to (a) reproduce, publicly perform, publicly display, and transmit the Ad Content on the Sites, (b) to format, modify, and create derivative works of, the Ad Content for placement purposes on Sites, and (c) to track and analyze Ad Content in order to provide, improve and expand Ad Services.
- c. The Site Operator reserves the right to insert the words "ad", "advertisement", "sponsored", "sponsored ad", or the like above, below or next to any Ad or otherwise indicate that such Ad is not endorsed or sponsored by the Site Operator or any third party at any time. The Site Operator further reserves the right to insert the words "This is not an official program of SGWS", or other similar notice or disclaimer, above or below any Ad Content at any time.

10. Prohibited Ad Content/Advertiser Materials.

Advertiser or Agency may not submit or provide Ad Content or Advertiser Materials that

are prohibited by this Agreement, which includes, without limitation, Ad Content or Advertiser Materials that:

- a. Promotes or contains material that violates any FTC guidelines or disclosures, or the alcohol industry self-regulatory standards from the Beer Institute, Distilled Spirits Council of the United States, and/or the Wine Institute.
- b. Is misleading, false, or untrue.
- c. Is negative or disparaging about a competitor.
- d. Promotes counterfeit goods.
- e. Promotes or contains material that improperly targets minors or any persons under the legal drinking age in the applicable jurisdiction.
- f. Promotes or contains material that is illegal, harmful, threatening, abusive, harassing, false, misleading, tortious, defamatory, vulgar, obscene, libelous, sexually explicit, violent, invasive of another's privacy, hateful, discriminatory based on race / sex / religion / nationality / disability / age / sexual orientation, directed toward children under 13 years of age pursuant to the Children's Online Privacy Protection Act (*see also* FTC's Children's Privacy Site at <http://business.ftc.gov/privacy-and-security/childrens-privacy>), or is otherwise objectionable.
- g. Generates invalid or fraudulent impressions, clicks, or other conversions.
- h. Infringes any Intellectual Property Right, or other proprietary rights of any party.
- i. Uses intellectual property of a third party in a competitive way. (For example, use a trademark in Ad Content or Advertiser Materials, but the Ad's landing page offers information or a means to purchase the goods or services of the trademark owner's competitor.)
- j. Contains software viruses or any other malicious technology designed to interrupt, destroy, or limit the functionality of the Services.
- k. Promotes sweepstakes, contests, or gambling.

With respect to any Ad Content or Advertiser Materials provided to SGWS Advertiser and Agency represent and warrant that it (i) has complied with all applicable laws, regulations, and industry standards in connection with the collection and use of the Ad Content and Advertiser Materials including but not limited to compliance with FTC guidelines or alcohol industry self-regulatory standards from the Beer Institute, Wine Institute, Distilled Spirits Council of the United States, and the like; (ii) has obtained all necessary rights, permissions, and consents to use the Ad Content and Advertiser Materials and for SGWS or Site Operator as applicable to use the Ad Content and Advertiser Materials in its performance of the Services; and (iii) Advertiser or Agency, as applicable, will notify SGWS if and to the extent Advertiser or Agency no longer has all necessary rights, permissions, or consents to use such Ad Content and Advertiser Materials.

THE SITE OPERATOR HAS THE RIGHT BUT NOT THE OBLIGATION TO IMMEDIATELY REMOVE, REFUSE TO USE, AND/OR REFUSE TO PROVIDE ANY AD CONTENT, ADVERTISER MATERIALS, OR SERVICES THAT ARE PROHIBITED BY THIS AGREEMENT OR WHICH WOULD OTHERWISE CAUSE ANY HARM TO THE SITE OPERATOR AT THE SOLE DISCRETION OF THE SITE OPERATOR.

11. **Advertiser Representations.** Advertiser represents and warrants that:

- a. it has the full right, power and authority to enter into this Agreement and any Ordering Document, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;
- b. it will not permit or assist any other entity to or attempt to (i) copy, reproduce, modify, damage, disassemble, decompile, reverse engineer, or create derivative works of the Services, Deliverables, or any portion thereof; (ii) breach, disable, tamper with, or develop or use (or attempt) any work around for any security measure provided by the Services; or (iii) use the Services or Deliverables or any part thereof in any manner other than as permitted herein; (iv) use the Services or Deliverables in a way that infringes or misappropriates a third-party's Intellectual Property Rights or personal rights; (v) engage in any promotional or marketing activities that are deceptive, misleading, obscene, defamatory or illegal; and (viii) interfere with others' use of the Services; and
- c. it will use the Services and Deliverables in compliance with all applicable laws.

12. **Confidentiality.**

Advertiser or Agency agree not to disclose Confidential Information without SGWS's prior written consent. "Confidential Information" includes without limitation: (a) analytics and/or other statistics relating to performance of the Services and/or the business of SGWS or the Site Operator(s), including without limitation forecasting, impressions or click-through rates; (b) all SGWS or Site Operator(s) APIs, source code, software, documentation, research, products, plans, services, developments and/or beta features pertaining to Services; (c) customers, customer lists, markets, and/or advertiser information; (d) personal identifying information; (e) inventions, processes, formulas, technology, designs, drawings, engineering and/or configuration information; (f) performance, analytics, marketing, financial, and/or other business information; (g) any other information designated in writing by SGWS as "Confidential" or an equivalent designation; and

(h) any information which might otherwise be reasonably considered to be confidential. Advertiser and Agency agree that it will protect Confidential Information from unauthorized use, access, and/or disclosure with a reasonable degree of care. Ad Analytics are the Confidential Information of SGWS, and SGWS shall have the right to provide aggregated and/or anonymized Ad Analytics to third parties.

13. **Other Terms and Conditions.**

- a. Independent Contractors. SGWS and Advertiser or Agency are independent contractors and nothing in this Agreement will create a partnership, joint venture, principal-agent, or employee- employer relationship between the parties. Neither party has the right, or authority, to create any obligation or responsibility, express or implied, on behalf of or in

the name of the other, or to bind the other party in any manner.

- b. Cooperation. Advertiser and Agency shall cooperate with SGWS and promptly, but in any event within three (3) days, provide all approvals requested by SGWS.
- c. Notices. Notices will be sent to the parties at the addresses contained in this Agreement and, for: (i) Advertiser, at the address indicated on the Insertion Order; and (ii) SGWS, at Southern Glazer's Wine and Spirits, LLC, 14911 Quorum Drive, Suite 150, Dallas, Texas 75254, attention: General Counsel. Any notice under this Agreement will be considered given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered US Mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service.
- d. Assignment. Advertiser or Agency may not assign this Agreement or any of its rights or delegate any of its duties under this Agreement without the prior, written consent of SGWS. A contract entered into between a party and a subcontractor to subcontract some or all of that party's obligations under this Agreement does not constitute an assignment.
- e. Force Majeure. Neither party will be liable to the other party for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and are beyond the reasonable control of the parties (such as strikes, blockade, war, terrorism, riots, pandemic, natural disasters, internet interruption or outage).
- f. Severability. If any term, condition, or covenant in this Agreement is held to be invalid, it will not affect the validity and enforceability of any other term, condition, or covenant, which will remain in full force and effect.
- g. Headings. Article, section, and paragraph headings used in this Agreement are for reference purposes only and not for use in construing or interpreting this Agreement. References in this Agreement to codes, regulations, rulings, statutes, or laws include all amendments, modifications, or replacements of them.
- h. No Waiver. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the waiving party.
- i. Entire Agreement. This Agreement, including all attachments, constitutes the entire understanding of the parties with respect to the Services, and supersedes all prior agreements, representations, and communications, whether written or oral, regarding the subject matter of this Digital Services Agreement. In the event of a conflict between this Digital Services Agreement, and any of the terms of service or policies incorporated by reference herein, then this Digital Services Agreement will prevail.
- j. Amendment or Modification. SGWS, at its sole discretion, reserves the right to modify the terms and conditions of this Digital Services Agreement at any time and without advance notice, by posting such updated terms on its website. In the event of such update, the updated Digital Services Agreement shall be deemed to govern as of the date that it

was posted upon SGWS's website. Should Advertiser or Agency not agree to be bound by any such updated terms, then such party's sole remedy shall be to discontinue its use of the Services.

- k. No Exclusivity. Nothing in this Agreement will prevent either party from entering into similar agreements with third parties.
- l. Customer Trademark and Brand Usage. During the term of this Agreement, SGWS may include Advertiser and/or Agency's name and logo on a list of customers of the SGWS Services, and Advertiser and/or Agency agrees to the use of its name and logo in marketing materials. Advertiser and Agency shall not publish any press release referring to SGWS without SGWS's prior approval (which may be by email) as to its contents which consent shall be given or withheld in SGWS's sole discretion.

14. **Warranties and Disclaimers.**

USE OF THE SERVICES AND DELIVERABLES IS AT ADVERTIDER OR AGENCY'S SOLE RISK. THE SERVICES, DELIVERABLES, AND SITES ARE PROVIDED ON AN "AS IS", "WHERE IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT ALLOWED BY LAW, SITE OPERATORS AND THEIR OFFICERS, AGENTS, EMPLOYEES, AFFILIATES, SUCCESSORS AND ASSIGNS (THE "SGWS PARTIES"): (a) EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING, PERFORMANCE, OR TRADE USAGE.

SGWS PARTIES ASSUME NO RESPONSIBILITY FOR ANY ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR ALTERATION OF, OR UNAUTHORIZED ACCESS TO, THE SERVICES, DELIVERABLES, OR ANY USER COMMUNICATIONS.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT ADVERTISER OR AGENCY'S OWN DISCRETION AND RISK AND ADVERTISER OR AGENCY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL OR ANY CLAIM THAT THE SERVICE OR DELIVERABLES INFRINGES A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

NO INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY ADVERTISER OR AGENCY FROM THE SGWS PARTIES, ANY SITE OPERATOR, OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. ADVERTISER AND AGENCY ARE NOT RELYING ON ANY REPRESENTATIONS OR STATEMENTS BY SGWS OR ANY SGWS PARTIES IN ENTERING INTO THIS AGREEMENT OTHER THAN AS MADE IN THIS DIGITAL SERVICES AGREEMENT.

15. Limitation of Liability.

THE SGWS PARTIES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR EXEMPLARY DAMAGES (INCLUDING ANY BUSINESS INTERRUPTION, LOSS OF ADVERTISING FEES, PROFITS, GOODWILL, USE, OR DATA, OR OTHER INTANGIBLE LOSSES, AND THE LIKE) RELATING TO OR ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THE FOREGOING PROVISION MAY HAVE THE EFFECT OF LIMITING THE LIABILITY OF THE SGWS PARTIES FOR THEIR OWN NEGLIGENCE, INCLUDING THEIR OWN GROSS NEGLIGENCE.

IF ADVERTISER OR AGENCY IS DISSATISFIED WITH THE SERVICES, OR ANY OF THE INFORMATION CONTAINED THEREON, OR REFUSE TO ABIDE BY THE AGREEMENT, SUCH PARTY'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICES.

NOTWITHSTANDING THE FOREGOING, TO THE EXTENT PERMITTED BY LAW, THE SGWS PARTIES' AGGREGATE LIABILITY RELATING TO OR ARISING IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, AND THE MATERIALS RELATING TO THE SERVICES WILL NOT EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE BY ADVERTISER OR AGENCY (EXCLUDING THE AMOUNT REIMBURSED TO SGWS FOR MEDIA PURCHASES, THIRD-PARTY EXPENSES INCURRED BY THE SGWS PARTIES FOR ADVERTISER OR AGENCY, OR TRAVEL EXPENSES) UNDER THE APPLICABLE ORDERING DOCUMENT IN THE THIRTY (30) DAYS BEFORE THE DATE OF THE COMPLAINED-OF ACTIVITY FIRST GIVING RISE TO THE CLAIM.

16. Indemnification.

By Advertiser. ADVERTISER AGREES TO DEFEND, INDEMNIFY, AND HOLD COMPLETELY HARMLESS THE SGWS PARTIES AND ANY SITE OPERATORS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, DEFICIENCIES, ACTIONS, CAUSES OF ACTION, COSTS, ATTORNEYS' FEES, EXPENSES, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, EXPENSES AND ANY OTHER LIABILITY OF WHATEVER KIND (INCLUDING ATTORNEYS' FEES), WHETHER GROUNDED IN CONTRACT, TORT, STATUTE, LAW OR EQUITY ("CLAIMS") ARISING FROM OR RELATED TO (a) AD CONTENT OR ALLEGED INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS BY THE AD CONTENT INCLUDING ANY CLAIM THAT THE INFORMATION OR MATERIALS SUPPLIED BY ADVERTISER OR AGENCY ON BEHALF OF ADVERTISER IN CONNECTION WITH THE SERVICES INFRINGES A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (b) ANY BREACH OF ADVERTISER'S REPRESENTATIONS, WARRANTIES OR OBLIGATIONS SET FORTH IN THIS AGREEMENT INCLUDING ANY ORDERING DOCUMENT; (c) ANY ACTS OR OMISSIONS OF ADVERTISER; (d) THE USE, PURCHASE, OR CONSUMPTION OF ADVERTISER'S PRODUCTS OR SERVICES, (e) ADVERTISER'S USE OF LICENSED THIRD PARTY MATERIALS IN AD CONTENT BEYOND THE LIMITATIONS OF USE WHICH ARE AGREED TO BY ADVERTISER; AND (f) RISKS BROUGHT TO

ADVERTISER OR ITS AGENCY'S ATTENTION BY SGWS WHERE ADVERTISER NEVERTHELESS HAS ELECTED TO PROCEED. ADVERTISER WILL USE COUNSEL REASONABLY SATISFACTORY TO SGWS TO DEFEND EACH CLAIM. IF SGWS REASONABLY DETERMINES THAT ADVERTISER'S DEFENSE OR INDEMNIFICATION IS NOT ABLE TO ADEQUATELY PROTECT SGWS FROM ADVERSE ECONOMIC CONSEQUENCES, SGWS MAY TAKE CONTROL OF THE DEFENSE AT ADVERTISER'S EXPENSE (AND WITHOUT LIMITING ADVERTISER'S INDEMNIFICATION OBLIGATIONS).

By Agency. AGENCY REPRESENTS AND WARRANTS THAT IT HAS THE AUTHORITY AS ADVERTISER'S AGENT TO BIND ADVERTISER TO THE AGREEMENT, AND THAT ALL OF AGENCY'S ACTIONS RELATED TO THE AGREEMENT WILL BE WITHIN THE SCOPE OF SUCH AGENCY. AGENCY WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SGWS PARTIES AND ANY SITE OPERATORS FROM ANY CLAIMS RESULTING FROM (I) AGENCY'S ALLEGED BREACH OF THE FOREGOING SENTENCE, OR (II) CLAIMS BROUGHT BY A THIRD PARTY ALLEGING THAT AGENCY HAS BREACHED ITS EXPRESS, AGENCY-SPECIFIC OBLIGATIONS UNDER THE AGREEMENT. AGENCY WILL USE COUNSEL REASONABLY SATISFACTORY TO SGWS TO DEFEND EACH CLAIM. IF SGWS REASONABLY DETERMINES THAT AGENCY'S DEFENSE OR INDEMNIFICATION IS NOT ABLE TO ADEQUATELY PROTECT SGWS FROM ADVERSE ECONOMIC CONSEQUENCES, SGWS MAY TAKE CONTROL OF THE DEFENSE AT AGENCY'S EXPENSE (AND WITHOUT LIMITING AGENCY'S INDEMNIFICATION OBLIGATIONS).

Procedure. The indemnified party(s) will promptly notify the indemnifying party of all Claims of which it becomes aware (provided that a failure or delay in providing such notice will not relieve the indemnifying party's obligations except to the extent such party is prejudiced by such failure or delay), and will: (i) provide reasonable cooperation to the indemnifying party at the indemnifying party's expense in connection with the defense or settlement of all Claims; and (ii) be entitled to participate at its own expense in the defense of all Claims. The indemnified party(s) agrees that the indemnifying party will have sole and exclusive control over the defense and settlement of all Claims; provided, however, the indemnifying party will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on an indemnified party(s) without its prior written consent.

17. Governing Law.

All matters relating to this Agreement or the Services, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction). Advertiser and Agency further agree not to join in any lawsuit with another person or serve as a class representative of any class action lawsuit against SGWS.

18. Dispute Resolution and Binding Arbitration.

ADVERTISER AND AGENCY ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A

CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT SUCH PARTY WOULD HAVE IF IT WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN ADVERTISER AND/OR AGENCY AND SGWS, AND/OR ADVERTISER OR AGENCY AND A SITE OPERATOR ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT OR THE SERVICES, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING CONFIDENTIAL ARBITRATION.

The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the Commercial Arbitration Rules (the “AAA Rules”) then in effect, except as modified by this Section 18. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this section. The arbitration will be administered as between U.S. citizens.

The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the agreement is void, voidable, or otherwise invalid. Any award of the arbitrator(s) will be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction; provided that such award is kept confidential and filed under seal with the appropriate court. The prevailing party, as determined by the arbitrator(s), will be awarded its attorney’s fees and all expenses of arbitration, including fees paid to experts and arbitrators. Notwithstanding the foregoing, an action by a party to obtain emergency temporary injunctive or equitable relief relating to the unauthorized disclosure of Confidential Information, or actual or threatened infringement of Intellectual Property Rights under this Agreement will be permitted and will not constitute a waiver of its right to arbitrate. The arbitral tribunal may not consolidate more than one person’s claims and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

ADVERTISER AND AGENCY AGREE TO ARBITRATION ON AN INDIVIDUAL BASIS. IN ANY DISPUTE, NEITHER PARTY WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER ADVERTISERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.