

## Designer Agreement

This Designer Agreement (the “Agreement”) is made and entered between This is CALA, Inc. (hereafter referred to as “CALA”, “we”, “us” or “our”) and you, the Designer (hereafter referred to as “Designer”, “you”, “your” or “yours”). Designer and CALA may be referred to herein each as a “Party” and collectively the “Parties.” In general, this Agreement sets forth the following terms:

- The services provided by CALA and our production and other partners;
- The process and responsibility of getting your designs developed, produced and shipped to you (see Section 1);
- Your responsibility for payment of fees (see Section 3); and
- Your responsibilities and conduct in using CALA’s services and technology platform, including, but not limited to, your compliance with applicable laws (see Section 5), your representations and warranties (see Section 8), your indemnification obligations (see Section 9) and your obligations of non-solicitation and non-circumvention (see Section 11).

In consideration of the covenants and conditions described below, CALA and Designer agree as follows:

**By clicking on the “accept” or similar button, (1) you are consenting and expressly agree to be bound by and are becoming a party to (a) the terms of this Agreement, and (b) the terms of the Terms of Use located at <https://ca.la/terms> (the “Terms of Use”); and (2) you represent and acknowledge that you have read and reviewed this Agreement and the Terms of Use.**

Please note that to be a Designer with CALA and to use the CALA Platform (as defined herein) and the associated Software (as defined herein), you must agree to the terms and conditions set forth in this Agreement and the Terms of Use. We may modify this Agreement at any time, and such modification shall be effective immediately upon either posting of the modified agreement or notifying you. You agree to review this Agreement periodically to ensure that you are aware of any modifications. Your continued access or use of the Platform shall be deemed your conclusive acceptance of the modified agreement. If you do not agree to the terms of this Agreement and/or the Terms of Use, you do not have our authorization to use any of the Services and you may not access or use any portion of the Site (as defined herein), Platform, or Software.

Terms not defined herein shall have the meaning as provided in our Terms of Use and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the Terms of Use, the terms of this Agreement shall supersede and control to the extent of any such conflict. This Agreement is effective as of March 17th, 2020.

## 1. Production Services

- (a) **General.** Through our technology platform (the “Platform”), which includes our proprietary software and content (the “Software”) on our online website (including all content and functionality available through the <https://ca.la/> domain name, the “Site”), we will provide you with the CALA services selected by you, including without limitation procuring and managing the procurement of Customer Service (as defined herein), Marketing (as defined herein) and Fulfillment (as defined herein) services in connection with your Subscription (as defined herein) and to connect you with our production and other partners (“Partners”) for the provision of the foregoing and the production and financing of garments and/or accessories (collectively, the “Garments”) in your design project (“Design Project”) (such services, the “Services”). Our Partners can provide you with certain production services selected by you according to your Subscription, including, but not limited to, fabric manufacturing, trim vendors, technical designers, pattern makers, sourcing services, sample makers, packaging and/or production services (collectively, the “Production Services”). For avoidance of doubt, the specific Services and Production Services provided to you are dependent upon the subscription model selected by you, as more fully described on the subscription pricing page (the “Subscription Pricing Page”) located at <https://ca.la/access> (“Subscription”), which, along with the selected Services, shall be set forth on the Customer Agreement or the Designer Services and Fees Agreement, as applicable, entered into in connection with this Agreement between you and CALA (either such agreement, the “Services and Fees Agreement”), the terms of which are incorporated herein.
- (b) **Production Services.** Once you design and submit a proposed Design Project through the Platform, we will review the Design Project to determine the estimated total costs of Production Services. You will then be given a quote (the “Quote”) for all costs and fees (dependent upon your Subscription, including without limitation, costs and fees for any of pattern-making, material sourcing, prototypes, product development, custom labels, a sample for final approval, bulk units, a keep sample for CALA and packaging, but, for the avoidance of doubt, excluding Marketing Costs (as defined herein), Fulfillment Costs (as defined herein) and Customer Service Costs (defined herein)) required for the completion of your Design Project based on compatibility of your Design Project to an available Partner’s Production Services. You understand and agree that (i) CALA, in its sole discretion, may match and connect you with a Partner based on the compatibility of the Production Services offered by such Partner to your Design Project; (ii) you agree to pay or finance the Quote prior to a Partner’s commencement of Production Services; (iii) no Production Services will begin if your payment is declined (e.g., if your credit card is declined or financing is denied); (iv) prior to full production

of the Garments of your Design Project, you agree to promptly review, approve and/or provide comments on any Garment sample (the “Sample”) created by a Partner in connection with your Design Project; (v) if you make major changes, to be determined in our sole discretion, to a Sample, we may cancel the Design Project so it can be re-priced (for sake of example but not limitation, a major change may include changing the product type, changing major construction of a Garment by adding a hood or sleeve, changing the process type from print to embroidery or substantially changing materials (i.e., from denim to leather)); (vi) once you approve a Sample (an “Approved Sample”) no changes of any kind can be made to a Garment or the Design Project; (vii) you cannot decrease the number of units, however you may be able to increase the number of units but up to the number of units included in the Approved Sample; (viii) you are solely responsible for payment of the Quote, any increase to the Quote and any additional costs incurred by us or a Partner and for any changes to the production and/or fulfillment schedule of the Garment or the Design Project due to changes made on your part to a previously-approved Sample; and (ix) there is no guarantee that CALA will be able to find a Partner to complete and fulfill your Design Project. All fees for Production Services shall be paid to CALA based on the Quote, pursuant to Section 3 hereof. For the avoidance of doubt, the Quote (and all information used to create the Quote) is considered CALA Confidential Information (as defined herein) subject to all obligations and restrictions in Section 7 hereof, and Designer agrees not to discuss the Quote with any Partner. By accepting the terms of this Agreement, you expressly agree to the provisions of this Section 1 “Production Services”.

- (c) **Shipping and Delivery.** Designer understands and agrees that for the production and/or Fulfillment of Garments (the “Produced Garments”) and dependent upon your Subscription, (i) Fulfillment Costs shall be handled by CALA and reimbursed by Designer as provided for in Section 3(f)(ii) hereof; (ii) you will provide accurate, truthful and up to date shipping information through the Platform for the delivery of Produced Garments; (iii) CALA or Partner may choose, in their sole discretion, to store any Produced Garments at a warehouse or other Fulfillment Partner; (iv) the method of shipping will be provided through a known courier or delivery service (“Courier”) chosen by CALA or warehouse or other Fulfillment Partner; (v) if you choose to receive the Produced Garments, you agree to be present on the expected delivery date or designate an authorized adult to accept delivery of the Produced Garments; (vi) if you choose to receive the Produced Garments, you will inspect all Produced Garments immediately upon delivery and, if Produced Garments are damaged, defective, or otherwise incomplete (the “Damaged Garments”), you will have thirty (30) days from the delivery date (the “Notification Period”) in which to notify and provide evidence to the Partner of such Damaged Garments, after which notification the Partner shall work with you to remedy the

damage, defect, or incompleteness (including without limitation, the cost to fix or replace the Damaged Garments) and return the Damaged Garments to Partner (if appropriate), all at Partner's cost and expense; (vii) if you choose to receive the Produced Garments, you will bear and be responsible for all shipping and delivery costs for the return of Damaged Garments to Partner if such damage is not reported to Partner within the Notification Period; (viii) CALA shall not be responsible for any damage caused by a warehouse or other Fulfillment Partner or Courier to the Produced Garments and your sole recourse will be against such warehouse or other Fulfillment Partner or Courier, as applicable, for such damage; (ix) you will direct all complaints in connection with any Damaged Garments to the warehouse or other Fulfillment Partner and not CALA; and (x) you will fully pay for all Produced Garments that meet the requirements and criteria of the Approved Sample.

## 2. Term; Termination

- (a) **Term.** This Agreement shall commence on the date you first accept the terms herein and will continue in effect for the term set forth on your Services and Fees Agreement (the "Initial Term"). Following the Initial Term, this Agreement will automatically renew for successive renewal terms of the same term as the Initial Term (each, a "Renewal Term" and together with the Initial Term, the "Term"), unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term, as applicable.
- (b) **Termination for Cause.** This Agreement may be earlier terminated by either Party: (i) if the other Party materially breaches a provision of this Agreement, and fails to cure such breach within fifteen (15) business days after receiving written notice of such breach from the non-breaching Party; or (ii) immediately upon written notice, if the other Party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other Party's property, or the other Party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other Party and is not dismissed within ninety (90) days, or the other Party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course. If Designer is the terminating Party under the foregoing subsections (i) or (ii), CALA will refund to Designer any Fees that were pre-paid for the then current Term, pro-rated for the remainder thereof.

Sections 2 (Termination), 7 (Property Rights of the Parties), 12 (Non-Solicitation; Non-Circumvent), 9 (Indemnity) and 14 (Miscellaneous) will

survive any termination or expiration of this Agreement in accordance with their terms.

### 3. Fees; Financing

- (a) **Subscription Fee.** You will pay CALA the non-cancelable and non-refundable subscription fee based on your Subscription (“Subscription Fee”) for the Initial Term. At the end of the Initial Term, you will pay the then-current non-cancelable and non-refundable Subscription Fee set forth on the Subscription Pricing Page for the Renewal Term, if any.
- (b) **Revenue Share Fee.** If revenue sharing is part of your Subscription, you will pay CALA a Revenue (as defined herein) share fee for the percentage detailed in your Subscription (“Revenue Share Fee”). As used herein, the term “Revenue” means all income from the sales of the Garments. For avoidance of doubt, the Revenue Share Fee is used to calculate the percentage due CALA, whereas the amount due to you is the Revenue Share fee less costs, fees and other expenses. For sake of example but not limitation, if the Revenue is \$1,000, and CALA is entitled to twenty percent (20%), CALA shall be due \$200; however, you shall be due \$800 less the Quote (to the extent not already fully paid), the Marketing Costs, the Fulfillment Costs, and the Customer Service Costs.
- (c) **Production Fee.** You will pay CALA the Quote for Production Services provided to you by a Partner, along with the Marketing Costs, Fulfillment Costs and Customer Service Costs described in Section 3(f) (collectively, “Production Fee”). You understand and hereby agree that dependent upon on your Subscription (i) payment or financing for one-hundred percent (100%) of the Quote shall be submitted by you up front prior to a Partner’s commencement of Production Services; (ii) neither CALA nor Partner is required to release or deliver Produced Garments to you or any Fulfillment Partner if you fail to make full payment or financing of the Quote and (iii) Marketing Costs, Fulfillment Costs, and Customer Service Costs shall be deducted from Designer’s percentage of Revenue as provided for in Section 3(f) hereof.
- (d) **Financing.** If financing is part of your Subscription and you opt-in to financing, you understand and hereby agree that (i) you will promptly provide CALA your bank statements for the past three (3) months, and a direct connection into your bank account and full access to your e-commerce platform so CALA and/or Partner can review your sales history; (ii) CALA determines your credit limit and financing rate in its sole discretion; (iii) CALA can change your credit limit and financing rate in its sole discretion; (iv) our Fulfillment Partner will fulfill the Produced Garments; (v) your e-commerce store will process the sales of the Produced Garments; (vi) our Fulfillment Partner will be linked to your e-commerce

store; (vii) the initial sales revenue will be deposited directly into your connected bank account via your e-commerce store and funds will be debited to pay down CALA's Revenue Share Fee, the Marketing Costs, Fulfillment Costs, Customer Service Costs, and your credit balance; (viii) you will be fully and completely responsible and liable to repay any and all amounts advanced to you by CALA; and (ix) in the event your credit debt is not paid in its entirety within four (4) months of checkout, CALA is allowed to use all means it deems necessary, in its sole discretion, to collect the credit debt from you, including without limitation, changing the Revenue Share Fee, collection of Produced Garments and other means.

- (e) **Access.** You will have access to available funds on the fifteenth (15th) day of the month for the previous month. You acknowledge and agree this delay is necessary to determine if Garments are returned and to resolve other issues.
- (f) **Third Party Costs Included in Production Fee.** In the event CALA pays for any of the following third party costs, such costs are included in the Production Fee as provided for in Section 3(c) hereof:
  - i. **Marketing Costs:** With respect to each Design Project CALA may set up paid marketing campaigns, creative and ads ("Marketing"), the authorization and cost of which ("Marketing Costs") shall be approved by Designer in advance of setup by CALA. Designer will pay for the costs of the Marketing (the "Marketing Costs") as they are deducted from Designer's percentage of the Revenue. For avoidance of doubt, the Marketing Costs will include a service fee to CALA, so that the actual amount spent on Marketing will be equal to the Marketing Costs minus such service fee.
  - ii. **Fulfillment Costs:** With respect to each Design Project, CALA will manage the procurement of fulfillment services from a Partner, including the warehousing, shipping and delivery of the Produced Garments ("Fulfillment"). Designer will pay for the costs of the Fulfillment (the "Fulfillment Costs") as they are deducted from Designer's percentage of the Revenue. For the avoidance of doubt, (x) the Fulfillment Costs will be calculated by weight and destination and (y) Fulfillment Costs change at least yearly based on pricing changes by the United States Post Office, FedEx, DHL UPS and other major carriers.
  - iii. **Customer Service Costs:** With respect to each Design Project, CALA may manage the procurement of customer service from a Partner, including the responses to customer inquiries, arranging for returns ("Customer Service"). Designer will pay for the costs of the Customer Service as specified on the Services and Fees Agreement (the "Customer Service Costs") as they are deducted from Designer's percentage of the Revenue. For the avoidance of doubt, the Customer Service Costs will be calculated by number of customer service interactions.

For avoidance of doubt, the term “Fees” includes the Subscription Fee, the Revenue Share Fee and the Production Fee. **\*\*By accepting the terms of this Agreement, you expressly agree to the provisions of this Section 3 “Fees; Financing\*\*“.**

#### **4. CALA Deactivation Policy**

CALA’s goal is providing reliable and long lasting partnerships with Partners and contractors. CALA does this by connecting the top designers with the top Partners in terms of design, quality, reliability, accountability, and transparency in communication. This is only possible when designers trust Partners and vice versa. If we determine, in our sole discretion, that you have breached the terms of this Agreement and/or the Terms of Use, you may be barred or suspended from using the Platform, either temporarily or permanently, depending on the seriousness of the breach.

#### **5. Compliance with the Law**

You hereby acknowledge and agree that you will use the Services, Production Services, Site, Platform, and/or Software in full compliance at all times with all relevant state, federal and local laws, statutes, rules, ordinances, regulations, policies and other requirements.

#### **6. Dispute Resolution**

The parties agree that any controversy or dispute between the parties concerning this Agreement, including deactivation of Designer’s access to the Platform or the construction or application of any of the terms, covenants, or conditions of this Agreement, will first be subject to reasonable good faith efforts by the parties to resolve such dispute, and if such good faith efforts are not successful, shall be submitted to binding arbitration in New York County, New York, on the request of any Party, and the arbitration shall comply with and be governed by the provisions of the New York Civil Practice Law & Rules, Article 75. Any cause of action or claim you may have with respect to this Agreement must be commenced within one (1) year after the claim or cause of action arises. Arbitration shall be conducted by three (3) arbitrators familiar with the commercial practices of CALA and Designer’s industry. Each Party shall be entitled to select one (1) arbitrator, which two (2) selected arbitrators shall in turn select a third arbitrator. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. All parties to the arbitration shall as an initial matter share the costs of such proceeding, but the prevailing Party may be awarded fees and costs,

including reasonable attorney’s fees. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by either Party except (a) an action to compel arbitration pursuant to this Section 6, or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Section 6.

## 7. Property Rights of the Parties

- (a) **Confidential Information.** Each Party recognizes and acknowledges that it may receive (“Receiving Party”) Confidential Information (as defined herein) of the other Party (“Disclosing Party”) provided under this Agreement. The Receiving Party agrees to hold all of the Disclosing Party’s Confidential Information in confidence, not to disclose any portion of it to others or use it in any way, commercially or otherwise, except as necessary to perform or receive the Services and/or Production Services and not to allow any unauthorized person access to it, either before or after termination of this Agreement; *provided, however*, that any such Confidential Information may be provided only to the Receiving Party’s employees, agents, subcontractors or contractors (collectively, “Representatives”) that have a need for such access for the sole purposes of performing or receiving the Services and/or Production Services pursuant to this Agreement, such access being limited to the Term and to the scope of their employment for or contract with the Receiving Party. A copy of this Agreement may be provided to potential investors and such investor’s respective counsel in response to a due diligence inquiry received by either Party with respect to a financing transaction, acquisition or any other business transaction involving such Party. Specifically in the case of CALA, Confidential Information may be provided to its Partners. Upon additional written agreement by the Parties, certain Confidential Information provided under this Agreement can be further limited only to distribution by the Receiving Party under the terms of a non-disclosure agreement. The Receiving Party shall not make copies of, disassemble, reverse engineer, or otherwise decompile any of the Disclosing Party’s Confidential Information. The Receiving Party shall promptly notify the Disclosing Party in the event of any unauthorized use or disclosure of any of the Disclosing Party’s Confidential Information. Upon the Disclosing Party’s request or the termination of this Agreement, the Receiving Party shall promptly return all documents and other materials received from the Disclosing Party, unless otherwise provided in this Agreement.

As used herein, the term “Confidential Information” means all information (whether or not patentable and whether or not copyrightable), owned, possessed or used by the Disclosing Party hereunder, including without limitation, inventions, products, designs, formulas, vendor information, customer information or lists, apparatuses, equipment, processes, research, reports, technical data,



know-how, computer programs, software, software or process documentation, hardware designs, technology, marketing or business plans, forecasts, unpublished financial statements, budgets, licenses, prices, costs and employee lists, specifications, samples, patterns, designs, plans, drawings, documents, data, and Third-Party Confidential Information that are communicated to, learned of, developed or otherwise acquired by the Receiving Party under this Agreement, whether disclosed orally or in written or electronic communication or other forms of media, and whether or not marked, designated or otherwise identified as being “confidential”, “secret”, or “proprietary”. For avoidance of doubt: (i) CALA Confidential Information includes confidential and proprietary information related to the Services, Production Services, Site, Platform, Software, Partners, Quotes and/or Fees; and (ii) Designer Confidential Information includes confidential and proprietary information related to your Design Project. For purposes of this Agreement, Confidential Information shall not include information the Receiving Party can document: (a) was or has become readily available to the public without restriction through no fault of the Receiving Party; (b) was received without restriction from a third party lawfully entitled to possess and disclose such information; (c) was rightfully in possession of the Receiving Party without restriction prior to the Disclosing Party’s disclosure of such information to the Receiving Party; or (d) was or is independently developed by the Receiving Party, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party’s Confidential Information.

- (b) **IP Rights.** For the purposes of this Agreement, “**IP Rights**” shall mean, whether registered or unregistered, all patents, copyrights, trademarks, service marks, trade secrets, mask works, privacy rights, data rights, moral rights and other intellectual property and proprietary rights, including all classes and types in all countries in the world, and applications, continuations, divisionals, reexaminations, reissues, extensions, modifications and derivatives of all of the foregoing.
- (c) **Third-Party Confidential Information.** For the purposes of this Agreement, “**Third-Party Confidential Information**” means confidential or proprietary information of third-parties received by the Receiving Party for which the Receiving Party is subject to a duty to maintain the confidentiality of such information and to use it only for certain limited purposes.
- (d) **Designer License.** Designer hereby grants to CALA a limited, non-exclusive, sublicenseable (to CALA’s Partners only), royalty-free license to reproduce, modify, distribute, make derivatives, publicly perform, publicly display, use and otherwise exploit all intellectual property and proprietary rights, to Designer Confidential Information, Design Project, products, Garments, software, technology, know-how and other materials (collectively, “Designer Materials”) only for performing the Services and Production Services, including without limitation, use with the Platform and

Software, during the Term, and for no other purpose or under any condition. This Agreement does not convey to CALA any ownership or stake in the IP rights of the Designer or any third party.

- (e) **Ownership.** The Receiving Party agrees that the Disclosing Party owns the Disclosing Party’s Confidential Information and it shall continue to be the exclusive property of the Disclosing Party, whether or not prepared in whole or in part by the Receiving Party and whether or not disclosed to or entrusted to the Receiving Party’s custody. Excluding the license in Section 7(d) hereof, Designer owns all right, title and interest in and to the Designer Materials. CALA owns all right, title and interest in and to the Services, Production Services, Site, Platform, Software, Quote and Fees. CALA agrees that any and all designs, Garments, products and other materials specifically made for Designer in the performance of the Services under this Agreement shall be the sole and exclusive property of Designer (“Work Product”). CALA agrees to assign and hereby assigns all right, title and interest in the Work Product to Designer.
- (f) **Defend Trade Secrets Act of 2016.** Each Party acknowledges and understands that, pursuant to the Defend Trade Secrets Act of 2016 (18 USC § 1833(b)), an individual may not be held criminally or civilly liable under any federal or state trade secret law for disclosure of a trade secret: (i) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; and/or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Additionally, an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to his or her attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.

## 8. Designer Representations and Warranties

Designer agrees, represents and warrants that:

- Designer will comply with all terms and conditions of this Agreement, Terms of Use and other policies related to the use of the Services, Production Services, Site, Software and Platform.
- Designer owns all right, title and interest in and to all Customer Materials and has all necessary rights to grant the license to CALA as described in Section 7(d) hereof.

- Designer's agreement to perform any services pursuant to this Agreement does not violate any agreement or obligation between Designer and any third party.
- Designer Materials, including but not limited to Designer's Garment designs and any Design Project, does not and will not infringe, violate, or misappropriate any right of a third party, including but not limited to any privacy rights, copyright, patent, trade secrets, trademark, or other proprietary or intellectual property right held by any third party.
- Designer will (a) provide clear instructions and timeline to Partner for the production of any Design Project, (b) be available during normal business hours to respond to Partner's questions related to a Garment, Approved Sample or a Design Project, and (c) will designate one (1) approver for the Design Project in order to provide timely approval, rejection and/or comments to a Sample or other inquiries or questions.
- If a Partner's final production of Garments materially deviates from or does not conform to an Approved Sample, Designer will immediately notify CALA of such deviation or non-conformity; provided, however, that Designer shall bear all costs and fees for any material deviation or non-conformity due to Designer's actions, inaction or instructions to Partner.
- Designer will be responsible and liable for all costs incurred by Partner and/or CALA for any Production Services that are delayed or hindered for any reason due to Designer's action or inaction, including, but not limited to, mistreatment or discrimination of Partners, lack of communication, unresponsiveness through the Platform, and illegal behavior.
- Designer will not engage in any unfair competition with CALA, or engage in any action which may constitute intentional interference with CALA's prospective economic advantage.
- Designer will not disclose, duplicate, sell, use for promotional means or otherwise use for any purposes, any assets, material, property, artwork or designs of Partner or CALA.
- Designer will promptly update Partner via the Platform as to any relevant updates with respect to the Design Project, including, but not limited to, any preset list of tasks in connection with a Design Project and/or changes to such list.
- Designer will pay all Fees, in a timely manner pursuant to Section 3 hereof.
- Designer will not use the Services, Production Services, Site, Platform, or Software in any manner that (a) violates any federal, state, or law, statute, rule, ordinance, regulation, policy or other requirement; (b) is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, fraudulent, deceptive, or misleading or otherwise objectionable; or

(c) adversely affects or reflects negatively on our goodwill, name or reputation or causes duress, distress or discomfort to us or anyone else, or discourages any person, firm or enterprise from using all or any portion, feature, or function of the Services, Production Services, Site, Platform or Software or from advertising, liking or becoming a supplier to use in connection with the Services, Production Services, Site, Platform or Software.

- If Designer opts-in for Fulfillment services: (i) it has obtained and currently holds all necessary permissions, rights and licenses to collect and use customer data needed for the fulfillment services; (ii) its customer data does not and will not infringe, violate, or misappropriate any right of any third-party, including without limitation, any IP Right held by any third-party; and (iii) it is in full compliance with all applicable local, state and federal laws, rules and regulations with respect to its customer data and privacy.

## 9. Indemnity

- (a) **Indemnification.** Each Party agrees to indemnify, defend, and hold the other Party and its affiliates, successors and assigns, and all of their officers, directors, employees, Partners and other agents (collectively, “**Indemnitees**”), harmless from any and all costs, expenses (including reasonable attorneys’ fees), losses, damages, claims, causes of action, liabilities, demands, penalties, forfeitures, suits and judgments, which any Indemnatee may hereafter incur, become responsible for or pay, as a result of any breach of such breaching Party’s representations, warranties, agreements or other promises contained in this Agreement.
- (b) **Limitation of Liability.** In no event shall either Party be liable to the other, for special, punitive, incidental, consequential or other indirect damages arising out of or in connection with any breach of this Agreement, even if advised of the possibility of such damages in advance. In no event will either Party’s liability for any damages to the other Party, regardless of the form of action, whether based on contract, tort (including negligence), strict liability, products liability or otherwise, ever exceed the Fees paid by Designer to CALA for the Services on which the claim is based that were provided by CALA in the twelve (12) months preceding the claim.

## 10. Waiver and Release

You agree that neither we nor our officers, directors, stockholders, employees, agents, partners, licensors or suppliers shall have any liability to you under any theory of liability or indemnity in connection with your use of the Site, the

Services, Production Services, Software or the Platform. You specifically acknowledge that we shall not be liable for the defamatory, offensive, or illegal conduct of any third party and that the risk of harm or damage from the foregoing rests entirely with you. You hereby release and forever waive any and all claims you may have against CALA, our officers, directors, stockholders, employees, agents, partners, licensors or suppliers (including but not limited to claims based upon the negligence of CALA, our officers, directors, stockholders, employees, agents, partners, licensors or suppliers) for losses or damages you sustain in connection with your use of the Site, the Services, Production Services, Software or the Platform.

## 11. Non-Solicitation; Non-Circumvent

- (a) **Non-Solicitation.** To the fullest extent permitted under applicable law, for the Term and for eighteen (18) months following the expiration or earlier termination of this Agreement for any reason, each Party agrees that, it shall not, directly or indirectly, solicit or hire any of the other Party's Representatives whom the other Party meets or who becomes known to such Party during, or as a result of, the Services. The foregoing provision will not prevent either Party from conducting generalized solicitations for such Representatives through the use of media advertisements, professional search firms or otherwise not specifically targeted to any of the other Party's Representatives.
- (b) **Non-Circumvent.** Due to this Agreement, Designer may be introduced to or learn of Partners, persons, contacts, entities, customers, distributors, clients, Representatives and consultants of CALA (collectively, "Designated Parties"). To the fullest extent permitted under applicable law, for the Term and for eighteen (18) months following the expiration or earlier termination of this Agreement for any reason, Designer agrees not to circumvent, attempt to circumvent, or permit any other party or person on your behalf to circumvent CALA's relationships and/or agreements with the Designated Parties in any way, manner or form, including without limitation, contacting, calling on, soliciting, consummating transactions, contracts or engagements, or taking away, either directly or indirectly, any Designated Party without the prior written permission of CALA.
- (c) **Remedies.** In the event of any breach of this Section 11, both Parties, in addition to any other remedies at law or in equity that the Parties may have, will be entitled, without the requirement of posting a bond or other security, to seek equitable relief.

## 12. Relationship of Parties

Notwithstanding any provision hereof, Designer is an independent contractor and is not an employee, agent, or joint venturer of CALA and shall not bind nor attempt to bind CALA to any contract. Designer shall not be eligible to participate in any of CALA's benefit plans, fringe benefit programs, group insurance arrangements or similar programs. CALA shall not provide workers' compensation, disability insurance, Social Security or unemployment compensation coverage or any other statutory benefit to Designer.

## 13. Miscellaneous

- (a) **Governing Law.** This Agreement shall be governed by the laws of the State of New York, without regard to any conflict of laws provisions or rules (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of New York. The Parties acknowledge and agree that the state and federal courts located in New York, New York shall have the exclusive jurisdiction and venue to adjudicate any controversy or claim arising out of or relating to this Agreement, or the breach thereof. The Parties hereby unconditionally and irrevocably consent to the exercise by such courts of personal jurisdiction over them and each Party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover reasonable costs and attorneys' fees.
- (b) **Injunctive Relief.** Any breach of Section 7 (Property Rights of Parties) of this Agreement will cause irreparable harm to CALA for which damages would not be an adequate remedy, and therefore, CALA will be entitled to seek injunctive relief with respect thereto in addition to any other remedies.
- (c) **Waiver.** Our failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition hereof, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition hereof.
- (d) **Severability.** In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Furthermore,

in lieu of any such illegal or unenforceable provision hereof, the parties shall add as a part of this Agreement a provision as similar in terms to such illegal or unenforceable provision as may be possible to be legal and enforceable.

- (e) **Entire Agreement.** This Agreement and the Terms of Use, incorporated herein by this reference, represent the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, representations, agreements and undertakings related to the subject matter of this Agreement. This Agreement may be modified by us at any time as described in the introduction of this Agreement. Designer does not have a right to modify this Agreement, except in a written instrument signed by a duly authorized representative of CALA.
- (f) **Assignment.** This Agreement is personal to Designer and Designer shall not have the right or ability to assign, transfer or subcontract any rights or obligations under this Agreement without the written consent of CALA. Any attempt to do so will be null and void and a material breach by Designer of this Agreement. CALA may freely assign this Agreement, in whole or in part, to any third party.
- (g) **Notice.** All notices by Designer under this Agreement shall be in writing and shall be deemed given when personally delivered to CALA, or three (3) days after being sent by US mail, overnight delivery to CALA, 50 Eldridge Street, Floor 2, New York, NY 10002 or email to hi@ca.la. All notices by CALA under this Agreement can be sent to Designer via email associated with the Platform.