

# MASTER SUBSCRIPTION AGREEMENT

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF THE SERVICE PROVIDER'S SERVICES AND PRODUCTS AND IT INCORPORATES HEREIN BY REFERENCE THE TERMS AND CONDITIONS AS STATED ON THE WEBSITE.

ARBITRATION NOTICE: THESE TERMS CONTAIN AN ARBITRATION CLAUSE BELOW, EXCEPT FOR CERTAIN TYPES OF DISPUTES MENTIONED IN THAT ARBITRATION CLAUSE, YOU AND THE SERVICE PROVIDER AGREE THAT DISPUTES BETWEEN US WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION, AND YOU AND THE SERVICE PROVIDER WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

THIS AGREEMENT CONSTITUTES A BINDING CONTRACT ON YOU. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, CLICKING THE "LOG IN", "SIGN IN" OR "CONTINUE" BUTTONS AS A PART OF THE ONLINE LOGIN AND REGISTRATION PROCESS THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT BETWEEN YOU AND THE SERVICE PROVIDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE PROVIDER'S SERVICES OR PRODUCTS.

This Master Subscription Agreement ("Agreement") governs the acquisition and use of all the Service Provider's software and products and other related components of the Service Provider's technology platforms made available to You (the "Services"). You agree to the terms of this Agreement.

## 1. OUR RESPONSIBILITIES

**1.1 Provision of Purchased Services.** The Service Provider will (a) make the Services available to You pursuant to this Agreement, (b) provide you with access to online or email support or other standard support, (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime and weekly regular maintenance downtime (ii) any unavailability caused by circumstances beyond the

Service Provider's reasonable control, including but not limited to, an act of God, act of government, war, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, telecommunications network or electrical failures, delays involving hardware or software not within Provider's possession or control, network intrusions, or denial of service attacks. Notwithstanding the foregoing, Service Provider shall have no liability for any functional warranty or downtime associated with your integrations, customizations, or modifications.

**1.2 Protection of Your Data.** The Service Provider will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your data in compliance with HIPAA and HITECH regulations and applicable laws, statutes, and regulations pertaining to data security, privacy, and implementation of an information security program for similar service. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your data by the Service Provider's personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law, or (c) as You expressly permit in writing.

**1.3 Service Level Commitment.** The Service Provider shall, subject to the exceptions noted in Section 1.1. above, use commercially reasonable efforts to ensure that the Service shall be operational and available for You ninety-two percent (92%) of the Subscription Period (not including regular maintenance or planned downtime). The Service Provider makes no representations or warranties regarding the availability of the web service interface or application provided by the Service Provider's licensor. You recognize that the Service may require a User ID provided by the Service Provider. Any interruption of the Service caused by the unavailability of the Service Provider's licensor site or any other third party service or data is not the responsibility of the Service Provider and shall not accrue against the service level commitment. The Service may not be available in all areas and are subject to applicable laws and regulations. The Service is provided under the terms and conditions of this Agreement.

**1.4 Supplier Limitation.** You agree that the Service is proprietary to the Service Provider, but access to the Service may include hardware, software elements and other proprietary materials from the Service Provider's suppliers and agents that may be subject to license restrictions. Consequently, Your access to the Service may be subject to the license limitations of the Service Provider's suppliers and agents.

**1.5 Equipment / Internet Access.** You shall be solely responsible for providing, maintaining and ensuring compatibility with the Service access requirements, all hardware, software, electrical or other physical requirements for use of the Service, including without limitation, telecommunications and internet service provider access, connections, links, web browsers or other equipment, programs and service required to access the internet to use the Service.

## **2. USE OF THE SERVICES**

**2.1 Subscriptions.** Unless otherwise provided in this Agreement, (a) Services are purchased as subscriptions, (b) subscriptions for Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

**2.2 Access to the Services.** Services are subject to the following restrictions: You will use the Services solely for your internal business purposes and shall not, nor permit any third party including Users, use SaaS Service to: (a) make any Service available to anyone other than registered users or use any Service for the benefit of anyone other than You unless expressly stated otherwise in this Agreement, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service except as specifically stated in this Agreement, (b) use a Service to store, transmit through or post infringing, libelous, or otherwise unlawful, tortious, defamatory, threatening, vulgar, or obscene material or material that may be harmful to minors, or to store or transmit material in violation of third-party privacy rights, (c) use a Service to store or transmit viruses or other harmful or deleterious computer code, files, scripts, agents, or programs, (d) interfere with or disrupt the integrity or performance of any Service or the data contained therein, (e) attempt to gain unauthorized access to any Service or its related systems or networks, (f) permit direct or indirect access or use of any of the Service Provider's intellectual property except as permitted under this Agreement, (g) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (h) frame or mirror any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes, or (i) disassemble, reverse engineer, or decompile a Service, or access it to (j) build a competitive product or service, (k) build a product or service using similar ideas, features, functions or graphics of the Service, (l) copy any ideas, features, functions or graphics of the Service or (m) determine whether the Services are within the scope of any patent, (n) send spam or any other form of duplicative and unsolicited messages, other than marketing and promotional messages to Your clients and distribution channel members and prospective clients and distribution channel members, (o) harvest, collect, gather or assemble information or data regarding other users of the SaaS Service without their consent;

Any use of the Services in breach of this Agreement, by You that in the Service Provider's judgment threatens the security, integrity or availability of the Service Provider's Services, may result in immediate suspension of the Services.

**2.3 User Access.** Any individual that accesses the Services in any manner (a "User") is subject to the following restrictions (a) each User must register using a unique email address and password, (b) a User's password may not be shared with any other individual, (c) each User must abide by Terms of Service, Privacy Policy, HIPAA BAA and any similar policy governing use of the Services then published on the Service Provider's website ("Use Policies"), and (d) each User may access and use the Services only for the intended purpose of the Services.

**2.4 Your Responsibilities.** You will (a) be responsible for Users' compliance with this Agreement, Use Policies and security procedures, (b) be responsible for the accuracy, quality and legality of Your data, the means by which You acquired Your data and Your use of data with the Services, (c) use commercially reasonable efforts to prevent unauthorized access or use, and (d) use the Services only in accordance with this Agreement, Use Policies, and security procedures applicable laws and government regulations.

**2.5 Passwords/Security.** You shall be solely responsible for the security, confidentiality and integrity of all messages and the content that You receive, transmit or store via the Site and/or Service. You are responsible for taking all reasonable steps to ensure that no unauthorized person shall have access to Customer's account or password. It is Your sole responsibility and You agree to bear all responsibility for the confidentiality of Your and Your Users' password(s) and all use or charges incurred from use of the Service with Your and/or Users' accounts.

**2.6 Submissions; No Spam.** You acknowledge that You are using the Service at Your own risk and You are personally responsible for verifying its suitability for Your needs. You agree that You will not upload or transmit any communications or content of any type through the Service that infringe or violate any rights of any party. By submitting communications or content to any public area of the Site or by email to Service Provider, You agree that such submission is non-confidential for all purposes. You may not use the Service to send unsolicited commercial email to any person.

**2.7 Compliance with Applicable Laws.** You agree that You will not use the Service for activities prohibited by state or federal law or other applicable rules or regulations.

**2.8 License Grant.** If You submit any content, business information, ideas, concepts or inventions to Service Provider through Service Provider website, Service or by email, You automatically grant, and/or warrant that the owner of such content or intellectual property has expressly granted, Service Provider a royalty-free, perpetual, irrevocable, world-wide, non-exclusive, sub-licensable (through multiple tiers) license to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display, including digitally or electronically, the communication or content in any media or medium, or any form, format or forum now known or hereafter developed.

### **3. FEES AND PAYMENT**

**3.1 Fees.** You will pay all fees specified in this Agreement and with the respective pricing schedules on the Service Providers website, which is subject to change from time to time. Except as otherwise specified herein or on said website, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

**3.2 Invoicing and Payment.** The Services Provider's Services are a Pay-As-You-Go Service and is billed monthly by the Service Provider, or its designated third-party processor, for month to month subscriptions, or it may be billed one time for annual subscriptions. Pricing quoted are subject to change without notice. You may be required to provide the Service Provider with valid and updated credit card information. When You provide credit card information, You authorize the Service Provider to charge such credit card for all Services listed in the initial subscription term, any additional service charges and any renewal subscription term(s). For any subscription price increases, Your credit card that You provided will automatically be charged the new rate on Your next monthly/annual billing cycle. All such charges shall be made in advance based on the frequency stated on the Service Provider's website, unless otherwise stated, or billed through a third-party processor, invoiced charges are billed in advance on a monthly/annual basis due at the beginning of the month/year and are non-refundable. You are responsible for providing current complete and accurate billing and contact information to the Service Provider and notifying the Service Provider of any changes to such information. Cancellation of Service requires 30 days notice.

**3.3 Overdue Charges.** If any invoiced amount is not received by the Service Provider by the due date, then without limiting the Service Providers rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by statutory law, whichever is lower, and/or (b) the Service Provider may condition future subscription renewals on payment terms shorter than those specified in Section 3.2 (Invoicing and Payment).

**3.4 Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Services is overdue (or 10 or more days overdue in the case of amounts You have authorized the Service provider to charge to Your credit card), the Service Provider may, without limiting the Service Provider's other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services to You until such amounts are paid in full. Other than for customers paying by credit card or direct debit whose payment has been declined, the Service Provider will give You at least 10 days' prior notice that Your account is overdue before suspending services to You.

**3.5 Payment Disputes.** The Service Provider will not exercise its rights under Section 3.3 (Overdue Charges) or 3.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**3.6 Taxes.** The Service Provider fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If the Service Provider has the legal obligation to pay or collect Taxes for which You are responsible under

this Section 3.6, the Service Provider will invoice You and You will pay that amount unless You provide the Service Provider with a valid tax exemption certificate authorized by the appropriate taxing authority.

**3.7 Future Functionality.** You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by the Service Provider regarding future functionality or features.

**3.8 Return & Refund Policy.** If You are not 100% satisfied with Your purchase of an “Virtual Reality” headsets, You can return the headsets for up to 30-days from the date of purchase and receive a full refund less a 20% restocking fee. Any headset You return must be in the same condition You received it and in the original packaging, with all the original components in original condition.

#### **4. TERM AND TERMINATION**

**4.1 Term of Agreement.** This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

**4.2 Term of Purchased Subscriptions.** Subscriptions may either be for a one year term, or on a month-to-month term. Subscriptions will automatically renew for additional periods equal to the expiring subscription term of either one year or month-to-month term, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term.

**4.3 Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**4.4 Refund or Payment upon Termination.** If this Agreement is terminated by You there are no refunds or credits for partial months of service, or for the remaining months of an annual subscription term. If this Agreement is terminated by the Service provider in accordance with Section 4.3, You will pay any unpaid fees covering the remainder of the term. In no event will termination relieve You of Your obligation to pay any fees payable to the Service Provider for the period prior to the effective date of termination.

**4.5 Your Data Portability and Deletion.** Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, the Service Provider will make Your data available to You for export or download for an additional fee. After such 30-day period, the Service Provider will have no obligation to maintain or provide any data and will thereafter

delete or destroy all copies of Your data in the Service Provider's systems or otherwise in the Service Provider's possession or control, unless legally prohibited.

**4.6 Surviving Provisions.** The sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Your Data Portability and Deletion," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

## **5. PROPRIETARY RIGHTS AND LICENSES**

**5.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, the Service Provider and its affiliates and licensors reserve all of their rights, title and interests in and to the Services, including all of related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**5.2 Legal Authority for Software Accounts.** You constitute and appoint the Service Provider to act for and on Your behalf as Your true and lawful agent for and in Your name, place and stead in the United States and any other applicable territories, either in writing, electronically, or by other authorized means, to create and manage applicable software accounts for the purposes of making the Services available to You.

**5.3 Ownership of Data.** You acknowledge that Service Provider owns all right, title and interest in, and retains any copyright and other intellectual property rights in all data provided through the Service and collected, developed or licensed by Service Provider for use in conjunction with the Service ("Provider Data"). You grant the Service Provider a worldwide, limited-term license to host, copy, display and use Your data as reasonably necessary for the Service Provider to provide, and ensure proper operation of, the Services and associated systems in accordance with this Agreement.

**5.4 Your Acknowledgement.** You acknowledge and agree that by submitting Your data or other information or content through the Service, You are solely liable for the appropriateness and right to submit such data, information or content through the Service. In addition, You represent and warrant that Your data and any information or content submitted by You through the Service is either owned by You or You have all right, title and interest to use such Your data, information or content. You further agree to not change, delete or hide any copyright or proprietary notice for any Provider Data.

**5.4 License to Use Feedback.** You grant to the Service Provider a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Service Provider's Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Service Provider's Services.

**5.5 Authorization for Marketing Materials.** You authorize the Service Provider to list You by name or logo as a client in the Service Provider's marketing materials and include a web link to Your website on the Service Provider's website. No other use of Your insignia, logos, trademarks, trade name or service marks shall be made by the Service Provider without Your prior written approval.

## **6. CONFIDENTIALITY**

**6.1 Confidentiality.** All nonpublic technical or business information disclosed by Service Provider to You, including without limitation, products, service, tools, techniques, software, documentation, data and designs, information related to Service Provider's business plans and/or customers shall be deemed "Confidential Information" and shall be deemed the property of Service Provider and shall be returned upon request. "Confidential Information" shall also include all Service Provider Data and Customer Data collected and/or entered through the Service. Confidential Information shall be used solely for the purposes of administering and otherwise implementing the terms of this Agreement.

**6.2 Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein.

**6.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **7. REPRESENTATIONS AND WARRANTIES**

**7.1 Representations.** Each party represents that it has validly entered into this Agreement and it has the legal power to do so.

**7.2 Warranty.** The Service Provider warrants that during an applicable subscription term (a) this Agreement, and any Use Policies will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your data in compliance with HIPAA and HITECH regulations and any other applicable laws and regulations, (b) the Service Provider will not materially decrease the overall security of the Services. For any breach of a warranty above, Your exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections.

**7.3 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## **8. MUTUAL INDEMNIFICATION**

**8.1 Indemnification by the Service Provider.** The Service Provider will defend You against any claim, demand, suit or proceeding made or brought against You by a third-party alleging that any Service infringes or misappropriates such third-party’s intellectual property rights (a “Claim Against You”), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a settlement approved by the Service Provider in writing of, a Claim Against You, provided You (a) promptly give the Service Provider written notice of the Claim Against You, (b) give the Service Provider sole control of the defense and settlement of the Claim Against You (except that the Service Provider may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give the Service Provider all reasonable assistance, at the Service Provider expense. If the Service Provider receives information about an infringement or misappropriation claim related to a Service, the Service Provider may in its discretion and at no cost to You (i) modify the Services so that they are no longer claimed to infringe or misappropriate, (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days’ written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Services are the basis of the Claim Against You; (2) a Claim Against You arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by the Service Provider, if the Services or use thereof would not infringe without such combination; (3) a Claim Against You arises from Services for which there is no charge; (4) a Claim Against You is based on traditional online storefront commerce functionality that is or was in general use in the industry; or (5) a Claim Against You arises from content, a

third-party application or Your use of the Services in violation of this Agreement, the any Use Policies.

**8.2 Indemnification by You.** You will defend the Service Provider and its affiliates against any claim, demand, suit or proceeding made or brought against the Service Provider by a third-party alleging that (a) any of Your data or Your use of Your data with the Services, (b) a third-party application provided by You, or (c) the combination of a third-party application provided by You and used with the Services, infringes or misappropriates such third-party's intellectual property rights, or arising from Your use of the Services in an unlawful manner or in violation of the Agreement, any Use Policies, (each a "Claim Against the Service Provider"), and You will indemnify the Service Provider from any damages, attorney fees and costs finally awarded against the Service Provider as a result of, or for any amounts paid by the Service Provider under a settlement approved by You in writing of, a Claim Against the Service Provider, provided the Service Provider (a) promptly gives You written notice of the Claim Against the Service Provider, (b) give You sole control of the defense and settlement of the Claim Against the Service Provider (except that You may not settle any Claim against the Service Provider unless it unconditionally releases the Service Provider of all liability), and (c) give You all reasonable assistance, at Your expense.

**8.3 Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section.

## **9. LIMITATION OF LIABILITY**

**9.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

**9.3 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR

ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **10. GENERAL PROVISIONS**

**10.1 Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Services system administrator designated by You. If to the Service Provider, notices shall be addressed to Attn: President, at address on the Service Provider's website

**10.2 Agreement to Governing Law and Jurisdiction.** Each party agrees that this Agreement shall be governed by the laws of the state of Minnesota without regard to choice or conflicts of law rules, and to the exclusive jurisdiction and venue of the Hennepin County District Court of Minnesota.

**10.3 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between the parties regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. If there are any conflicts in terms and conditions between this Agreement and any Use Policies or other policies on the Service Provider website, this Agreement shall control in all respects.

**10.4 Assignment.** You may not assign any of Your rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the Service Provider (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, the Service Provider will refund to You any prepaid fees allocable to the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**10.5 Relationship of the Parties.** The parties are independent entities. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**10.6 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**10.7 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**10.8 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

## **11. DISPUTE RESOLUTION BY BINDING ARBITRATION**

11.1 Please read this carefully as it affects Your rights. Most customer concerns can be resolved quickly and to the customer's satisfaction by contacting our Customer Care Center at the Service Provider's contact listed on their website. In the unlikely event that the Service Provider Customer Care Center is unable to resolve Your complaint to Your satisfaction (or if the Service Provider has not been able to resolve a dispute it has with You after attempting to do so informally), we each agree to resolve those disputes through binding arbitration rather than in a court of competent jurisdiction. Any arbitration under these this Agreement will take place on an individual basis; any class arbitrations and class actions are not permitted. You may elect to speak with independent counsel before using the Service Provider Services or completing any purchase.

11.2 The Service Provider and You agree to arbitrate all disputes and claims between us before a single arbitrator. The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to, any claim that all or any part of this Agreement is void or voidable The types of disputes and claims we agree to arbitrate are intended to be broadly interpreted. It applies, without limitation, to:

11.2.1 claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory;

11.2.2 claims that arose before these or any prior Terms (including, but not limited to, claims relating to advertising and intellectual property)

11.2.3 claims that are currently the subject of purported class action litigation in which You are not a member of a certified class and

11.2.4 claims that may arise after the termination of these Terms.

11.3 You agree that, by entering into this Agreement, You and the Service Provider ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

11.3 A party who intends to seek arbitration must first send, by U.S. certified mail, a written Notice of Dispute (“Notice”) to the other party in accordance with the rules of the American Arbitration Association in the state of where arbitration will occur. A Notice to the Service Provider should be addressed to the Service Provider, Attn: President at the address listed on the Service Provider’s website. The Notice must (a) describe the nature and basis of the claim or dispute and (b) set forth the specific relief sought (“Demand”). If the Service Provider and You do not reach an agreement to resolve the claim within 30 days after the Notice is received, You or the Service Provider may commence an arbitration proceeding.

Revised April 2020