

General Terms and Conditions (the "Terms")

1. DEFINITIONS.

"Advertising Services" means Company's use of Subscriber Data to inform online marketing software.

"Agreement" means the License Agreement between Company and Subscriber, as mutually amended and/or restated by the parties from time to time.

"Authorized User" means an employee, contractor or agent of Subscriber, who is authorized to access and use the Services under the rights granted to Subscriber pursuant to the Agreement.

"Company Data" means data derived from the Services and its partners or licensors, including but not limited to: (i) publicly available metadata about recordings, (ii) audience profiles generated by Company from third party data, (iii) data generated as a result of advertisements, (iv) data regarding groups of similar artists across the competitive landscape, and (v) data identifying common patterns amongst marketing actions or particular markets that drive success.

"Claim" means any claim, action, proceeding, or damages thereto.

"Confidential Information" means any information, written or oral, expressed in electronic media or otherwise disclosed, and tangible or intangible including, but not limited to, science, formulas, patterns, compilations, programs, devices, methods, techniques and processes, financial information and data, business plans, business strategies, marketing plans, Subscriber or customer lists, price lists, cost information, information about employees, descriptions of inventions, process descriptions, descriptions of technical know-how, information and descriptions of new software and new software development, scientific and technical specifications and documentation, and pending or abandoned patent applications of a party, or other proprietary information now known or in possession of, or hereafter learned or acquired by a party, that pertains to the business of either party, or derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; including any and all information concerning the Services and any trade secrets, technical information and business information transmitted to or acquired in the course of performance of the Agreement or use of the Services.

"Contact Person" means Subscriber's point of contact with respect to the Services.

"Feedback" means information, data and feedback concerning use or operation of the Platform, and any and all modifications, design changes, features and improvements to the Services suggested by Subscriber, or any of its officers, directors, employees or agents.

"Go Live Date" has the meaning set forth in Section 5(a).

"Indemnified Party" has the meaning set forth in Section 10(c).

"Indemnifying Party" has the meaning set forth in Section 10(c).

"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Marketing Fees" means the marketing fees as set out in the Order Form.

"Marks" means the logos, trademarks and service marks of Subscriber.

"Materials" means Marks, Subscriber Data and Subscriber Advertising Materials provided to Company or accepted for use by Company hereunder for Company to provide the Services.

"Personally Identifiable Information" means information that: (i) relates to an individual; and (ii) identifies or can be used to identify, locate, or contact that individual alone or when combined with other personal or identifying information that is or can be associated with that specific individual.

"Platform" means Company's web-based technology marketing platform to algorithmically target, launch and report on advertising campaigns on behalf of Subscriber using Subscriber Advertising Materials.

"Policies" means Company's Terms of Use, Privacy Policy and Data Use Policies in effect from time to time and available on the Company's website.

"Services" means the Platform and the Advertising Services.

“**Subscription Fees**” means the subscription fees set out in the Order Form.

“**Subscriber Advertising Materials**” means any advertising copy provided or approved by Subscriber.

“**Subscriber Data**” means performance data derived from streaming transactions of Subscriber’s catalog of artist recordings, as provided to Subscriber either directly by Subscriber’s digital service providers (DSPs) or indirectly from the DSPs through Subscriber; *but not including* publicly-available data, or data derived from use of the Services, including but not limited to end-user data or other Company Data.

2. SERVICES, USE OF PLATFORM AND LICENSE.

- (a) License to Access Platform. Subject to and conditioned on Subscriber’s and its Authorized Users’ compliance with the Agreement, including without limitation the payment by Subscriber of the Subscription Fees, Company hereby grants to Subscriber a non-exclusive, non-transferable, non-sublicensable, limited license to access the Services solely for use by Authorized Users for Subscriber’s marketing purposes in accordance with and during the term of the Agreement. Subscriber shall use the Platform for lawful purposes only and in compliance with applicable laws, rules and regulations. All right, title, interest and ownership in and to the Services, and any other Intellectual Property Rights or proprietary rights of Company, shall be and at all times remain in Company. Other than as expressly set forth in these Terms, all other rights in and to the Services are expressly reserved by Company.
- (b) Restrictions. Subscriber shall not, and shall not permit any other third party to, access or use the Services except as expressly permitted by the Agreement. For purposes of clarity and without limiting the generality of the foregoing, Subscriber shall not, and shall not permit any other third party to:
- i. copy, modify, or create derivative works or improvements of the Platform or related documentation, in whole or in part, except as expressly authorized in the Agreement;
 - ii. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or use the Services for the benefit of, or otherwise make the functionality thereof available to, any third party (except in the context of providing information to Subscriber’s marketing partners);
 - iii. pledge as security or otherwise encumber, the rights and license granted hereunder to the Services or any part thereof;
 - iv. reproduce, disassemble, decompile, reverse engineer, translate, adapt, modify or create derivative works of the Platform or any portion thereof, or otherwise attempt to discover any Platform source code or underlying Confidential Information of the Company;
 - v. without Company’s prior written consent allow access to or use of the Platform by, or display the Platform user interfaces to, anyone other than Authorized Users through the use of their own then-valid access credentials;
 - vi. bypass or breach any security device or protection used by the Services;
 - vii. input, upload, transmit, or otherwise provide to or through the Services any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code;
 - viii. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, or Company’s provision of services to any third party, in whole or in part;
 - ix. remove, alter, obscure, delete or in any manner alter the copyright, trademark or other proprietary rights notices or disclaimers appearing on the Platform as delivered by Company;
 - x. knowingly use the Platform to store or transmit infringing, libelous, or otherwise unlawful or tortious content, media, assets, malicious code, or material in violation of any third-party privacy rights, or access or use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other rights of any kind of any third party;
 - xi. access or use the Services for purposes of competitive analysis of the Services, the development, provision, or use of a competing software service or product or any other purpose that is to the Company’s detriment or commercial disadvantage; or
 - xii. otherwise attempt to gain unauthorized access to the Platform or its related systems or networks.
- (c) Subscriber Data. Subscriber will provide Company with Subscriber Data as necessary for Company to provide the Services to Subscriber. Subscriber represents and warrants the accuracy and quality of Subscriber Data as well as the lawfulness of the means by which it was acquired.

- (d) License to Use Subscriber Data. Subscriber hereby grants to Company a non-exclusive, royalty-free, worldwide, non-transferable, irrevocable license in perpetuity to use, copy, reproduce, adapt, exploit, combine with other data, edit and re-format, generate, store, disclose, distribute, and maintain a database of, any and all Subscriber Data for the purpose of providing and improving the Services (e.g. developing new and/or improving Services, conducting statistical analysis and/or providing and identifying aggregate anonymized insights, predictions and patterns); *provided*, that artist names, track names, label names, imprint names, catalog numbers, ISRCs and UPC identifiers, and other identifying information will be anonymized in any report, analysis, insight, prediction or pattern derived from the Subscriber Data and used by the Company for other than strictly internal or Subscriber's own purposes. This license survives the termination of the Agreement.
- (e) Company Data. Company will collect Company Data. Company may combine Company Data with certain Subscriber Data to provide the Services, but Subscriber understands that Company shall not share any Company Data that constitutes information which is confidential to any other subscriber of the Company, or constitutes Personally Identifiable Information, if any, with Subscriber.
- (f) Subscriber Advertising Materials. Solely and exclusively to the extent required by Company to provide the Services, and subject to all the terms and conditions of the Agreement, Subscriber hereby grants to Company a limited, worldwide, non-exclusive, non-transferable, royalty-free license to: (i) use, display and publish the Marks, (ii) use, reproduce, display, distribute, publish and perform the Subscriber Advertising Materials, and (iii) deploy the Marks and Subscriber Advertising Materials in advertising campaigns or otherwise related to delivery of the Services to the Subscriber. Company's use of the Marks and/or Subscriber Advertising Materials shall comply with any usage instructions provided by Subscriber from time to time and must be approved by Subscriber before they are to be used. Except as expressly licensed herein, Company shall acquire no right, title or interest in or to any Marks or Subscriber Advertising Materials or goodwill associated therewith. Subject to Section 2(g) below, all rights not expressly granted herein are reserved by Subscriber, and no other licenses are granted herein by implication, estoppel or otherwise.
- (g) Publicity. In addition to the rights granted in Section 2(f) above, Subscriber also agrees that Company may publicly disclose and identify Subscriber as a Subscriber of the Company's Services, and in connection therewith, Company may use Subscriber's name and Marks solely in connection with Company's business development activities, press releases and on Company's website.

3. **CONFIDENTIALITY; OWNERSHIP.**

- (a) Confidential Information. In the performance of the Agreement, each party may come into possession of the other party's Confidential Information. All materials and information disclosed by either party to the other will be presumed to be Confidential Information and will be so regarded by the receiving party unless the receiving party can prove that the materials or information are not Confidential Information because they are: (i) already known to the receiving party at the time that they are disclosed by the disclosing party; or (ii) publicly known at the time of the disclosure to the receiving party by the disclosing party. Additionally, the confidential obligations herein will cease as to particular information that: (w) has become publicly known through no fault of the receiving party; (x) is received by the receiving party properly and lawfully from a third party without restriction on disclosure and without knowledge or reasonable suspicion that the third party's disclosure is in breach of any obligations to the disclosing party; (y) has been developed by the receiving party completely independent of the delivery of Confidential Information hereunder; or (z) has been approved for public release by written authorization of the disclosing party.
- (b) Obligations. The receiving party for the disclosing party's Confidential Information agrees that it will: (i) maintain and preserve the confidentiality of such Confidential Information, including, without limitation, taking such steps to protect and preserve the confidentiality of such Confidential Information as it takes to preserve and protect the confidentiality of its own Confidential Information; (ii) use such Confidential Information only in furtherance of its rights and obligations under the Agreement; (iii) disclose such Confidential Information only to its own employees on a "need-to-know" basis only, and only to those employees, directors, officers, agents, subcontractors and professional advisors who have contractually agreed to maintain the confidentiality thereof; (iv) for Confidential Information that comprises software, not disassemble, "reverse engineer," "reverse compile" or analyze the inputs and outputs of any software or hardware provided under the Agreement for any purpose, including but not limited to, attempting to ascertain or deduce the functionality or workings of the software or hardware; and (v) not disclose such Confidential Information to any third party without the express written consent of the disclosing party.
- (c) Ownership. The parties acknowledge that they will maintain sole and exclusive ownership of all right, title, and interest in and to their own Confidential Information, including all Intellectual Property Rights therein. Nothing contained in the Agreement will be construed as granting any rights, by license or otherwise, to any Confidential Information, except as expressly set forth herein.
- (d) Feedback. Company shall maintain sole and exclusive ownership of all right, title, and interest in and to any and all Feedback, and Company shall have the right to use, in any manner and for any purpose whatsoever, any and all Feedback without limit in time and without payment to Subscriber. Subscriber agrees (i) to assign and does hereby assign to Company all right, title and interest that Subscriber may have or acquire in and to any and all Feedback, (ii) that Company

may have something similar to the Feedback already under consideration or in development, and (iii) that it is not entitled to any compensation or reimbursement of any kind from Company in connection with the Feedback under any circumstances. Notwithstanding the foregoing, Company acknowledges that Subscriber may provide similar suggestions to similar service providers with whom it may engage in the future and that Company shall have no right to prevent or estop communications between Subscriber and such third party on the basis that such suggestions are similar to the Feedback.

- (e) **Required Legal Disclosure.** Notwithstanding the above, a receiving party may disclose Confidential Information to the extent required by any applicable law, regulation or court; *provided however*, that the receiving party will (if legally permitted to do so) notify the other party in writing, promptly after becoming aware of its obligations to make such a disclosure and will permit the other party to seek to challenge or limit such required disclosure. Further, each party may disclose the existence of the Agreement or Confidential Information of the other for the limited purpose of enforcing its rights under the Agreement before a Court of competent jurisdiction, provided that such disclosure will be accomplished in such a manner so as to protect the rights of the parties to the Agreement to the maximum extent reasonably possible.
- (f) **Security.** Each party will maintain reasonable technical and organizational security measures to protect the other party's Confidential Information from loss, misuse, alteration, or unintentional destruction. Such security measures shall include reasonable physical, administrative, and technical controls, screening, and security procedures and other safeguards reasonably necessary to: (i) securely administer the distribution and use of all access credentials to protect against any unauthorized access to or use of the Services; and (ii) control the content and use of Subscriber Data, including the uploading or other provision of Subscriber Data for processing by the Platform.

4. SUBSCRIBER OBLIGATIONS.

- (a) **Subscriber Contact.** At all times during the term of the Agreement, Subscriber shall ensure that Company has access to the Contact Person with regards to advertising and marketing and will be entitled to establish a direct working relationship with such Contact Person in order to facilitate the day-to-day operations of the Services. Subscriber will provide Company and keep updated the name and contact information of its Contact Person. Subscriber and Company will remain in communication throughout the term of the Agreement, and shall provide cooperation and assistance as Company may reasonably request to enable Company to exercise its rights and perform its obligations under and in connection with the Agreement.
- (b) **Marks and Subscriber Advertising Materials and Subscriber Data.** Subscriber shall provide Company with the Marks, Subscriber Advertising Materials and Subscriber Data or permission to access Subscriber Data, prior to the Go Live Date and from time to time as required, via upload to the Platform, to enable Company to provide the Services hereunder.
- (c) **Responsibility for Sample Subscriber Advertising Materials.** As part of the Services, Company may automatically generate sample advertising materials, using Subscriber's publicly available territory rights, for Subscriber to approve or reject, if Subscriber wishes to take advantage of this service. Such sample advertising materials shall be considered Subscriber Advertising Materials. With respect to such automatically generated sample Subscriber Advertising Materials, as between Company and Subscriber, Subscriber shall be solely responsible for all matters related to the content of such Subscriber Advertising Materials.
- (d) **Responsibility for Subscriber-provided Subscriber Advertising Materials.** With respect to Subscriber-provided Subscriber Advertising Materials, as between Company and Subscriber, Subscriber shall be solely responsible for all matters related to the content and creation of such Subscriber Advertising Materials, including, without limitation, all costs, activities, formatting and size requirements, obligations and liabilities associated with their creation, production and supply and approval. Subscriber shall be solely responsible for timely submissions of Subscriber Advertising Materials that are in compliance with applicable law, obtaining and bearing all costs, obligations and liabilities respecting any necessary licenses, permissions, rights or clearances from third parties for such Subscriber Advertising Materials. Company has the right, but not the obligation, to actively monitor Subscriber Advertising Materials and to remove or deny any Subscriber Advertising Materials if, in Company's opinion, they are in breach of the Agreement or are otherwise inappropriate.
- (e) **Authorized Users.** Use of the Platform is restricted to the Authorized Users of Subscriber. Subscriber shall take all commercially reasonable steps: (i) to ensure that no Authorized User credentials will be shared or otherwise used by two or more individuals at any time, (ii) to cause such Authorized Users to comply with the terms and conditions of the Agreement, and (iii) to protect the Platform from unauthorized access, copying or use.
- (f) **Viruses.** Subscriber shall take commercially reasonable steps, including the use of up-to-date virus detection software, to scan its Marks and Subscriber Advertising Materials before uploading to the Platform, to ensure that they do not contain any viruses, Trojan horses, trap door, worms or any other malicious computer programming routines that may damage a software or computer system.
- (g) **Subscriber Data Non-Exclusive.** It is understood and agreed that the Subscriber Data provided to Company under the terms of the Agreement is provided to Company on a non-exclusive basis, and Subscriber shall not be restricted from using the same data for its own business, or from selling, leasing or disclosing the same data, in whole or in part, to any third party, provided that no source data originating from the Company or the Platform may be disclosed to a third party.

- (h) Compliance with Laws. Subscriber shall comply with all applicable laws, rules and regulations in the course of its use of the Services and activities under the Agreement, including but not limited to applicable data privacy and protection laws.
- (i) Compliance with Policies. Subscriber shall comply with the Policies.

5. COMPANY OBLIGATIONS.

- (a) Access to Platform. Company will provide Subscriber with access to the Platform at such date after the Effective Date as the parties have completed their onboarding processes (the "Go Live Date"). Company shall specify procedures which Subscriber must use to establish and obtain access to the Platform, including the provisioning of access codes, passwords, technical specifications, connectivity standards or protocols and any other relevant procedures to enable the Subscriber to access the features and functions of the Platform.
- (b) Updates. Company may from time to time, in its sole discretion, apply updates to the Platform, and to the extent such updates affect accessibility, Company will endeavour to limit any inaccessibility to times outside normal business hours.

6. MARKETING ACCOUNT AND FEES.

- (a) Marketing Account Deposits. From time to time Subscriber will deposit with Company funds as specified in the Order Form to maintain the minimum marketing account balance. Such funds, as replenished from time to time, will be held by Company in trust on behalf of Subscriber, to be spent on advertising campaigns conducted through the Platform.
- (b) Marketing Fees. In addition to the Subscriber Fees, Subscriber shall pay Company the Marketing Fees. Company will not be obliged to run ad campaigns unless there is a minimum marketing account balance held by the Company. Marketing Fees will be deducted by Company from the marketing account balance. The marketing account balance shall be used by Company to: (i) provide Advertising Services, and (ii) pay Company the Marketing Fees earned by the Company in respect of those Advertising Services. Subscriber shall transfer marketing account balance funds to Company's designated bank account by wire transfer or by such other means as may be specified in the Order Form.

7. TERM AND TERMINATION; SUSPENSION OF ACCESS.

- (a) The term of the Agreement shall commence on the Effective Date and shall continue as specified in the Order Form.
- (b) Company may terminate the Agreement, effective on written notice to Subscriber, if Subscriber fails to pay any amount when due hereunder, and such failure continues more ten (10) days after Company's delivery of written notice thereof.
- (c) Either party may terminate the Agreement immediately upon written notice to the other party in the event of any material breach of the Agreement by the other party that is not cured within thirty (30) days following written notice thereof.
- (d) Either party may terminate the Agreement if the other party becomes insolvent or seeks protection under any bankruptcy, receivership, liquidation, insolvency, creditor's arrangement, or comparable proceeding, or if any such proceeding is instituted against such party and is not dismissed within sixty (60) days.
- (e) Upon termination, the license granted for the Services provided hereunder shall immediately cease. Company will immediately cease providing access to the Services and deactivate all Authorized Users accounts. Subscriber will promptly pay to Company all Subscription Fees owed up to the date of termination, and each party shall return to the other party, or at such other party's written request, destroy, all documents and tangible materials containing, reflecting, incorporating, or based on such party's Confidential Information. Unless Company terminated the Order Form pursuant to Section 7(b) or 7(c) of these Terms, within thirty (30) days of the date of termination Company shall return to Subscriber any remaining unused or uncommitted balance of the marketing account balance, less any accrued Marketing Fees. Sections 2(g), 3, 7, and 9-14 of these Terms, any other right or obligation of the parties in the Agreement that, by its nature, should survive termination or expiration of the Agreement, will survive any expiration or termination of the Agreement.
- (f) Company may, in its sole discretion and with written notice to Subscriber, suspend, terminate, or otherwise deny Subscriber's, or any Authorized User's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (i) Company receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Company to do so; or (ii) Company believes, in its good faith and sole discretion, that: (x) Subscriber or any Authorized User has failed to comply with any material term of the Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under the Agreement; (y) Subscriber or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (z) the Agreement expires or is terminated. This Section 7(f) does not limit any of Company's other rights or remedies, whether at law, in equity, or under the Agreement.

8. CHANGES.

Company reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Company's Services to its customers; (ii) the competitive strength of or market for Company's Services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law.

9. DATA BACKUP.

The Services do not replace the need for Subscriber to maintain regular data backups or redundant data archives. COMPANY HAS NO OBLIGATION OR LIABILITY FOR, AND HEREBY DISCLAIMS ANY SUCH OBLIGATION OR LIABILITY FOR, ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF SUBSCRIBER DATA.

10. REPRESENTATIONS; WARRANTIES; INDEMNITY.

- (a) Subscriber represents and warrants that: (a) it has all necessary rights in the Materials and to grant the rights hereunder; (b) the Materials (i) are not defamatory, obscene, offensive or otherwise objectionable or unlawful; (ii) do not infringe any copyright, trademark, trade secret, patent or other intellectual property or proprietary right, or violate any right of privacy, publicity or other right of any person; (iii) will comply with applicable laws and have been obtained by legal means; (iv) will not promote violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; (v) will not be likely to deceive any person; (vi) will not be threatening, abusive or cause annoyance, inconvenience or needless anxiety; (vii) will not be likely to harass, upset, embarrass, alarm or annoy any other person; (viii) will not impersonate any person, or misrepresent your identity or affiliation with any person; (ix) will not give the impression that it emanates from Company, if this is not the case; and (x) will not advocate, promote or assist any unlawful act; (c) it is a corporation duly incorporated, organized, and validly existing in good standing and has the right, power and authority to execute, deliver and perform its obligations under the Agreement; and (d) the execution, delivery and performance of the Agreement have been duly authorized by Subscriber.
- (b) Company represents and warrants that: (i) it is a corporation duly incorporated, organized, and validly existing in good standing and has the right, power and authority to execute, deliver and perform its obligations under the Agreement; and (ii) the execution, delivery and performance of the Agreement have been duly authorized by the Company.
- (c) Each party (the "**Indemnifying Party**") shall, at its own expense, defend, indemnify and hold harmless the other party (the "**Indemnified Party**") and its respective directors, officers, employees, agents, contractors and authorized representatives from and against any Claim relating to a breach of any warranty, representation or obligation made by the Indemnifying Party under this Section 10, and any costs and fees (including, without limitation, attorneys' fees) reasonably incurred by the Indemnified Party that are attributable to such a Claim. The Indemnified Party will: (i) provide the Indemnifying Party with reasonably prompt notice of any such Claim; (ii) permit the Indemnifying Party to answer and defend such Claim; and (iii) provide the Indemnifying Party with such information, assistance and authority, at the Indemnifying Party's expense, as may be necessary or appropriate to enable the Indemnifying Party to defend such Claim. The Indemnifying Party shall not settle any Claim: (x) on any terms or in any manner that adversely affects the rights of any Indemnified Party, or (y) without the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed. The Indemnified Party has the right, at its expense, to employ separate counsel and participate in the defense of any Claim that the Indemnifying Party is defending.

11. WARRANTY DISCLAIMER.

THE PARTIES ACKNOWLEDGE THAT THE SERVICES ARE PROVIDED 'AS IS' AND MAY NOT BE FUNCTIONAL TO THE DEGREE INITIALLY ADVERTISED OR IN ANY ENVIRONMENT. COMPANY DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE OF THE SERVICES NOR THAT THE SERVICES WILL MEET SUBSCRIBER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE (INCLUDING WITH RESPECT TO ANY IP OR TERRITORY SCREENING BY COMPANY OF SUBSCRIBER ADVERTISING MATERIALS), COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, TITLE, QUIET ENJOYMENT, DATA ACCURACY AND SYSTEM INTEGRATION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

12. LIMITATION OF LIABILITY.

- (a) SUBJECT TO SECTION 12(b) BELOW, EACH PARTY'S TOTAL LIABILITY TO THE OTHER FOR ANY DAMAGES HEREUNDER (REGARDLESS OF THE FORM OF ACTION, WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, NEGLIGENCE, STRICT LIABILITY AND/OR OTHERWISE) SHALL NOT EXCEED IN AGGREGATE THE AMOUNT OF MARKETING FEES ACTUALLY PAID TO COMPANY HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE FOR PUNITIVE, INDIRECT, INCIDENTAL EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, PROFITS, BUSINESS USE, DATA OR OTHER INTANGIBLES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF

WHETHER SUCH DAMAGES WERE FORESEEABLE AND EVEN IF SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- (b) THESE LIMITATIONS OF LIABILITY DO NOT APPLY TO LIABILITY RELATING TO A BREACH OF EITHER PARTY'S OBLIGATIONS UNDER SECTION 3, (CONFIDENTIALITY), SUBSCRIBER'S OBLIGATIONS UNDER SECTION 2(b) (RESTRICTIONS), SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, SUBSCRIBER'S OBLIGATIONS UNDER SECTIONS 4(b)-(d) (SUBSCRIBER ADVERTISING MATERIALS), EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10(c).

13. BASIS OF BARGAIN.

EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THE FOREGOING SECTIONS 11 AND 12 OF THIS AGREEMENT ARE MATERIAL BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

14. MISCELLANEOUS.

- (a) Non-assignability. Neither the rights nor the obligations arising under the Agreement are assignable or transferable by Subscriber, and any such attempted assignment or transfer shall be void and without effect.
- (b) Execution of Agreement, Controlling Law and Severability. The Agreement shall become effective only upon its execution by both Company and Subscriber and shall be governed by and construed in accordance with the laws of the State of California. In the event that any of the provisions of the Agreement, including these Terms, shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect. Company and Subscriber each hereby specifically submit themselves to the jurisdiction of the state and federal courts sitting in Los Angeles County, California and each agrees that said courts have the sole and exclusive jurisdiction over any and all disputes and causes of action between the parties.
- (c) Entire Agreement. The Order Form, these Terms, and the Policies constitute the entire Agreement, and any and all written or oral agreements heretofore existing between the parties hereto are expressly cancelled, with the exception of any separate nondisclosure agreement that may be entered into by and between Company and Subscriber. Any modification of the Agreement must be in writing and signed by both parties hereto.
- (d) Notices. All notices required under the Agreement shall be in writing and deemed duly given upon receipt if delivered in person or sent by certified mail, return receipt requested, postage prepaid, or by commercial overnight courier with tracking capabilities, addressed as set forth on the Order Firm, or to such other address as may be provided by written notice.
- (e) No Waiver. The failure of a party to require performance by another party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
- (f) Force Majeure. Any delay or failure of either party to perform its obligations under the Agreement, other than the payment of money, shall be excused if and to the extent that such delay or failure is caused by an event beyond its reasonable control, including, without limitation, any act of God, public health emergency, communicable disease outbreak, action by any government authority, fire, flood, natural disaster, civil disturbance, war, labor problem, failure of or interruption in telecommunications or data transmission systems, or the inability to obtain materials, labor, equipment or transportation. In the event of *force majeure*, each party shall be allowed a reasonable period of time to fulfill the obligations under the Agreement having regard to the applicable circumstances.
- (g) Headings. The section headings appearing in these Terms are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or meaning of the Agreement of any portion hereof.
- (h) Counterparts. The Agreement may be executed in multiple counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. Delivery of a copy of the Agreement bearing a signature and transmitted by email or other form of electronic transmission will have the same effect as physical delivery of the document bearing the original signature.
- (i) Currency. All dollar amounts referred to in the Order Form are in United States Dollars (USD) and all amounts owing under the Agreement shall be paid in USD.