

SET FORTH BELOW ARE THE TERMS AND CONDITIONS (THE “AGREEMENT”) FOR MOBILE TEXT MESSAGE AND EMAIL SERVICES OFFERED BY MENUSIFU, INC (THE “SERVICES”).

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, BY SIGNING UP FOR AN ACCOUNT, BY LOGGING IN TO YOUR ACCOUNT, BY ACCESSING ANY PART OF THE SERVICES (INCLUDING BY MEANS OF ANY API INTERFACE), YOU, AS A CUSTOMER OF THE SERVICES OR A REPRESENTATIVE OF AN ORGANIZATION THAT IS A CUSTOMER OF THE SERVICES (COLLECTIVELY, “YOU”), REPRESENT AND WARRANT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE AT LEAST EIGHTEEN (18) YEARS OF AGE, (3) THE INFORMATION YOU PROVIDED IN CONNECTION WITH YOUR REGISTRATION FOR THE SERVICES IS TRUE, ACCURATE, CURRENT AND COMPLETE, AND (4) YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY OR ON BEHALF OF THE ORGANIZATION YOU HAVE NAMED AS THE AUTHORIZED USER, AND TO BIND THAT ORGANIZATION TO THIS AGREEMENT. NOTE THAT BY REPRESENTING AND WARRANTING THE ABOVE, YOU ARE MAKING A LEGALLY ENFORCEABLE AGREEMENT.

Please note that we may change any terms of this Agreement which will be effective immediately upon posting or the effective date indicated in the new Agreement, as applicable, and apply to any continued or new use of the Services. We may change the Services, or any features of the Services at any time, and we may discontinue the Services or any features of the Services at any time. If you do not agree with the terms of this Agreement, you must immediately discontinue your use of the Services. Otherwise, your continued use of the Services constitutes your acceptance of such changes. We recommend that you regularly check our website to view the then-current terms.

We may refuse service, close your accounts or the accounts of any Authorized Users, and change eligibility requirements at any time, in our sole discretion.

I. DEFINITIONS

“Equipment” means any equipment and ancillary services needed to connect to, access or otherwise use the Services, including modems, hardware, servers, software, operating systems, networking, web servers.

“MenuSifu”, “we”, “us” or “our” means MenuSifu, Inc. or its applicable subsidiaries or affiliates involved in the performance of this Agreement.

“Intellectual Property Rights” means any and all intellectual property, industrial property, and other proprietary rights throughout the world, including all rights in, to, or arising out of patents, patent applications, inventions (whether patentable or not), invention disclosures, trade secrets, know-how, proprietary information, works of authorship, copyrights, mask works, moral rights, trademarks, service marks, software, data, technology, layout designs and design rights, and all registrations, applications, renewals, extensions, or reissues of any of the foregoing.

“Order Form” means the form evidencing the initial order for Services, including any addendum or online confirmation form, and any subsequent orders separately entered into by you and us. Each Order Form shall be incorporated into and become a part of this Agreement.

“Services” means, collectively, all our products and services and related offerings, features and functionalities, including digital marketing services via mobile text message and email and, and any

related user interface designs, applications, including our mobile application, processes, software, source code, application programming interfaces, systems delivered or accessible through any media or device, images that are made available by us through any email or website builder tools, designs, templates, text, graphics, video, information, audio and other files, support, additional services and all related materials and documentation, and any and all enhancements and modifications thereto howsoever made, provided by or on behalf of us to you pursuant to this Agreement.

“Tax” or “Taxes” means all applicable taxes, including indirect taxes such as goods and services tax (“GST”), value added tax (“VAT”), sales tax, fees, duties, levies, or other similar taxes.

II. DESCRIPTION OF SERVICES.

1. The Services may include recurring and nonrecurring text messages and emails related to promotions, products, events, reminders, special offers or other information that we think will be of interest to you or you instructed us to deliver. Message and email frequency will vary. We reserve the right to alter the frequency of messages or emails sent at any time, so as to increase or decrease the total number of sent messages. Message and data rates may apply.

2. To access some features of the Service, you must register for an account (“Account”). When you register for an Account, you may be required to provide us with some information about yourself, such as your name, address, email address, billing information or other contact information. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. You are solely responsible for maintaining the confidentiality of your Account, and you accept responsibility for all activities that occur under your Account. For purposes of this Agreement, you are the “Account Owner” and any other users you authorize will be deemed “Authorized Users.” To the extent applicable, Authorized Users that you appoint as your administrators shall have the authority to act on your behalf to perform administrative duties, enter into binding agreements and accept Fees (as defined below).

3. You will not, and will not permit any Authorized User or other party to: (a) modify, adapt, alter, translate, or create derivative works of the Services; (b) sublicense, lease, rent, loan, distribute, or otherwise transfer the Services to any third party; (c) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services, except to the extent expressly permitted by applicable law (and then only upon advance written notice to us); (d) tamper, bypass, delete, or disable any copy protection or security mechanisms of the Services; (e) use or demonstrate the Services in any other way that is in competition with us; (f) remove any notice of proprietary rights from the Services; (g) attempt to gain unauthorized access to, or disrupt the integrity, performance or security of the Services or the data contained therein; (h) attempt to probe, scan or test the vulnerability of any Service or to breach the security or authentication measures without proper authorization; (i) use or copy the Services, except as expressly allowed herein or (j) otherwise use the Services in violation of this Agreement.

III. LICENSES.

1. Subject to your complete and ongoing compliance with this Agreement, we grant you, solely for your own use, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Service.

2. If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service (“Feedback”), then you hereby grant MenuSifu an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Services and create other products and services.

IV. USE OF THE SERVICES.

1. Except and solely to the extent such a restriction is impermissible under applicable law, You agree to comply with the following in connection with your use of the Services:

- (a) You may not reproduce, distribute, publicly display, or publicly perform the Services;
- (b) You may not make modifications to the Services;
- (c) You may not interfere with or circumvent any feature of the Services, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, you may not use it.
- (b) You may not use our Services to promote or incite harm toward others or that promote discriminatory, hateful, or harassing content. We may suspend or terminate your account if you send or distribute content through the Services that we determine, in our sole discretion, contains either of the following:
 - (i) Any statement, photograph, advertisement, or other content that in our sole judgment could be reasonably perceived to threaten, advocate, or incite physical harm to or violence against others; or
 - (ii) Any statement, image, photograph, advertisement, or other content that in our sole judgment could be reasonably perceived to harm, threaten, promote the harassment of, promote the intimidation of, promote the abuse of, or promote discrimination against others based solely on race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, disease, or immigration status.
- (c) You may not use our Services if you are a person or you are a member of an organization that has publicly stated or acknowledged that its goals, objectives, positions, or founding tenets include statements or principles that could be reasonably perceived to advocate, encourage, or sponsor hateful content or a threat of physical harm.
- (d) You may not distribute content that is materially false, inaccurate, or misleading in a way that could deceive or confuse others about important events, topics, or circumstances.

In the event that we determine, in our sole discretion, that you are not complying with this Section, we may terminate your access to or use of the Services, disable your account or access to the Services, and/or remove all or a portion of your content, in each case, without notice or liability and without refund.

2. You are responsible for obtaining and maintaining the Equipment. You are also responsible for maintaining the security of the Equipment and for all uses of the Equipment with or without your knowledge or consent. You are responsible for making frequent backup copies of your contacts and content. We are not obligated to provide you with a way to download or otherwise export your contacts and content out of the Services.

3. For every listing, message or campaign sent or distributed via the Services, you agree that we may add a link to the Services and a statement such as “Email Marketing by MenuSifu”, “Powered by MenuSifu” or similar statements in the footer or other similar location that does not unreasonably obscure the Services.

4. You consent to us collecting data, including websites not provided, maintained, or hosted by us, through automated means, such as through harvesting bots, robots, spiders, or scrapers ("Automated Data Collection") and the use of that data for internal business purposes.

5. You understand that not all content sent through the Services will be received by or will be capable of being viewed by their intended recipients or will be viewable by your recipients in the same way they appear in our Services environment. You further understand that delivery of content by means of the Services may involve transmissions over various networks, and that the content could be reformatted or otherwise revised to conform to the formatting or technical requirements of such networks. You also understand and agree that content exceeding maximum character limitations may be truncated, abbreviated, reduced or otherwise abruptly cut short.

6. The Services may permit your customers and users to, among other things, (a) create deal for selling your products and/or services, (b) book appointments with your customers and users, or (c) collect information from your customers and users (collectively, “Your Products”).

7. You are solely responsible for Your Products, including any and all injuries, illnesses, damages, claims, liabilities and costs suffered in respect thereto. You shall be responsible for all costs of procuring and delivering Your Products, including any associated shipping, taxes and any other fees associated therewith.

8. You will be solely responsible for any and all statements and promises you make and for all user assistance, warranty and support of Your Products, and to comply with any promises you make to your customers and user. You further agree to provide your contact information for any end-user questions, complaints or claims.

V. THIRD PARTY TERMS

1. The Services may incorporate products or services provided or operated by third parties, which may include marketing and advertising services, social network platforms, publication and delivery services, payment processing services and other payment intermediaries or websites (each, a “Third Party Service”), some of which may have established relationships with us and some of which may not. By using one of these tools, you agree that Company may transfer that information to the applicable Third Party Service. We do not have control over the content and performance of Third Party Services. We have not reviewed, and cannot review or control, the material, including computer software or other goods or services, made available on Third Party Services, and we do not represent, warrant, or endorse any Third Party Services, or the accuracy, currency, content, fitness, lawfulness, or quality of the information, material, goods, or services available through Third Party Services. We disclaim, and you agree to assume, all responsibility and liability for any damages or other harm, whether to you or to third parties, resulting from your use of Third Party Services. We may terminate any Third Party Services' ability to interact with the Services at any time, with or without notice, and in our sole discretion, with no liability to you or to any third party.

2. You agree to abide by the terms and conditions of any applicable Third Party Service (such as Google, Twilio and Apple). Notwithstanding anything set forth herein to the contrary, you will abide by this Agreement regardless of anything to the contrary in your agreement with any third party and you shall not use such Third Party Service to avoid the restrictions set forth in this Agreement.

VI. INTELLECTUAL PROPERTY.

1. We own and shall retain all right, title and interest in and to all Intellectual Property Rights in the Services. Except as expressly set forth herein, no express or implied license or right of any kind is granted to you regarding the Services, including any right to obtain possession of any software, source code, data or technical material related to the Services. Any use of the Services other than as specifically authorized herein is prohibited and will automatically terminate your rights with respect to your use of the Services.

2. You own any information that you provide to us in connection with your use of the Services, such as contact lists (including email addresses and phone numbers of your contacts) and other content (including your website) (collectively, "Customer Data"). You grant us a limited, non-exclusive, royalty-free, worldwide license, with the right to sublicense, use, reproduce, publish, distribute, perform and display your Customer Data in order (a) to provide the Services under this Agreement, (b) to develop services, and (c) to comply with any court order, legal process, law, regulation or any request from a governmental, regulatory or supervisory body. We may use and disclose aggregated data that does not identify Customer or any natural person for our legitimate business purposes, including improvements to the Services, product development, research and marketing.

3. You are solely responsible for obtaining valid consent from your customers and users as needed for provision of your products or service that may incorporate, reference or utilize the Services. You are solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of Customer Data, and you are responsible for maintaining, securing and storing your contacts and content in accordance with applicable law and any contractual obligations you may have (including this Agreement).

4. If you submit any suggestions, business information, ideas, concepts or inventions or content to us through the Services or otherwise ("Submissions"), you agree that each such Submission is non-confidential for all purposes and you automatically grant, or warrant that the owner of such content or intellectual property has expressly granted, us a non-exclusive, royalty-free, perpetual, irrevocable, worldwide license, with the right to sublicense, to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display such Submission in any manner or in any media now known or hereafter created.

VII. FEES; PAYMENT; TAXES.

1. In consideration for the Services, you agree to pay us the fee set forth in an applicable Order Form ("Fees"). We may change any of our Fees at any time by posting a new pricing schedule to the Services or in your account and/or sending you a notification by email. You are responsible for reviewing the Fees from time to time and remaining aware of the Fees charged by us and any applicable discounts. You acknowledge and agree that our measurements are the definitive measurements for any payment due and owed hereunder.

2. Notwithstanding anything set forth herein to the contrary, any disputes about any charges to you under this Agreement or applicable Order Form must be submitted to us in writing within sixty (60) days of the date such charges are incurred. You agree to waive all disputes not brought within the sixty (60) day period, and all such charges will be final and not subject to challenge.

3. Unless otherwise stated, any Fees or any other amounts are exclusive of Taxes. In the event that any amount payable by you to us is subject to Taxes, we will collect the full amount of those Taxes from you and the collection shall not reduce or somehow impact on the amount to which we are entitled. You must pay any applicable Taxes. In the event that any payments and/or amount payable by you to us is subject to (a) any withholding or similar tax, (b) any Taxes not collected by us, or (c) any other Taxes or other government levy of whatever nature, the full amount of that Tax or levy shall be solely your responsibility and shall not reduce the amount to which we are entitled under this Agreement. You will reimburse us and indemnify and hold us harmless against any and all claims by any competent tax authority related to any Taxes, including withholding or similar Taxes, penalties and/or interest that we may be compelled to pay on account of your non-payment.

VIII. COMPLIANCE WITH LAWS.

You represent and warrant that your use of the Services, including in connection with Your Products, will comply with all applicable laws and regulations. You are responsible for determining whether the Services are suitable for you to use in light of your obligations under any applicable laws or regulations. You may not use the Services for any unlawful or discriminatory activities, including acts prohibited by the Federal Trade Commission Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, or other laws that apply to commerce.

IX. PRIVACY.

1. Each party shall comply with all laws and regulations of the relevant jurisdictions that apply to its respective performance of obligations and exercise of rights under this Agreement, including the Regulation (EU) 2016/679 of 27 April 2016, General Data Protection Regulation (the “GDPR”), the California Consumer Privacy Act (the “CCPA”), as amended by the California Privacy Rights Act (the “CPRA”), and other U.S. federal or state data privacy and data protection laws, and related implementing regulations (collectively, “Data Privacy Laws”).

2. You warrant that (a) you have complied, and shall continue to comply, with Data Privacy Laws in your collection, processing and provision to us of personal information; and (b) you shall not process any personal information using the Services, or permit us to process any personal information, in breach or contravention of any order issued to, or limitation of processing imposed on, you by any regulatory authority.

3. You agree to and comply with our privacy policy which can be found here (<https://www.menusifu.com/legal/Privacy-Policy>)

4. and is incorporated into this Agreement. You warrant you have adopted and complied with a legally sufficient “customer privacy notice.” Your privacy notice will be posted so that your contacts have notice of your data collection and use practices, including your practices with respect to contact data that you obtain from us, and will otherwise comply with Data Privacy Laws.

5. You shall monitor and process “unsubscribe” or “opt-out” requests received by you directly within ten (10) days of submission and update the contacts to which messages are sent through your account. You cannot charge a fee, require the recipient to give you any personally identifying information beyond a necessary contact information, or make the recipient take any unnecessary step as a condition for honoring an unsubscribe or opt-out request. As required under the CAN-SPAM Act and other applicable laws, you acknowledge that you are responsible for maintaining and honoring the list of unsubscribe or opt-out requests during the Term of this Agreement.

X. TERM AND TERMINATION.

1. The term of this Agreement shall be monthly, or to the extent applicable, the period specified in your Order Form (the “Initial Term”). The Initial Term shall automatically renew for additional monthly periods or as specified in your Order Form (each a “Renewal Term”, and together with the Initial Term, the “Term”).

2. To terminate your account or subscription for any of the Services, you must request termination at least thirty (30) days prior to the end of the current Term. Except as otherwise agreed to by us in writing, there are no refunds for any pre-paid Fees. We may terminate this Agreement at any time without cause. WE ARE NOT RESPONSIBLE FOR YOUR FAILURE TO PROPERLY TERMINATE YOUR ACCOUNT AND/OR SUBSCRIPTION TO THE SERVICES OR FOR ANY CREDIT CARD OR OTHER CHARGES OR FEES YOU INCUR AS A RESULT OF YOUR FAILURE TO PROPERLY TERMINATE YOUR ACCOUNT AND/OR SUBSCRIPTION.

3. Upon termination or expiration of your account and/or subscription for the Services, this Agreement and any rights or licenses granted to you hereunder shall immediately terminate, except that (a) all sections of this Agreement that by their nature should survive termination will survive termination, and (b) you will continue to be responsible for your Products. Under the CAN-SPAM Act, Canada’s Anti-Spam Legislation and the GDPR, as applicable, you acknowledge that you are responsible for maintaining and honoring the list of unsubscribe or opt-out requests following termination of your account and/or subscription. If your account is classified (in our sole discretion) as inactive for over 120 days, we have the right to permanently delete any of your contacts and content.

XI. INDEMNIFICATION.

You hereby agree to defend, indemnify and hold us, our officers, directors, employees, affiliates, subsidiaries, licensors, agents, members, sponsors, investors, agents, and representatives (each, an “Indemnified Party”) harmless from any losses, damages, judgments, fines, reasonable attorneys’ fees, and costs, in connection with any third party claims arising out of or relating to (a) any actual or alleged breach by you of this Agreement, (b) your contacts and content, including the content or effects of any messages you distribute, or Your Products (including claims relating to violations of law, false advertising, injuries, illness, damages, death, taxes, fulfillment, defective products or services or unclaimed property), or (c) otherwise arises from or relates to your use of the Services. Any settlement that does not fully release the Indemnified Party from liability or which would impose any monetary, injunctive or other obligation or restriction upon the Indemnified Party shall be subject to the Indemnified Party’s prior written approval. The Indemnified Party may participate in the defense of the claim with counsel of its choosing at its expense; provided, that if you fail to promptly assume the defense or

settlement of the claim, the Indemnified Party may assume sole control of the defense of the claim at your expense.

XII. REPRESENTATION AND WARRANTIES.

1. You represent and warrant that (a) you have all necessary rights and consents to post and distribute Your Products and the Customer Data through the Services, (b) that Your Products and Customer Data will (i) not infringe, misappropriate, or otherwise violate the Intellectual Property Rights or other rights of any third party, (ii) not constitute defamation, invasion of privacy or publicity, or otherwise violate any similar rights of any third party, (iii) not be used in any activity in violation of the law or to promote such activities, including a manner that might be illegal or harmful to any person or entity, and (iv) comply with applicable industry standards, and (c) that your use of the Services will not violate any rules, restrictions, policies, or requirements of your email service provider, internet service provider or other applicable service provider.

XIII. WARRANTY DISCLAIMER; REMEDIES; RELEASE.

YOU EXPRESSLY AGREE THAT THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. USE OF THE SERVICES, INCLUDING IN CONNECTION WITH YOUR PRODUCTS, AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. WE DO NOT WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR COMPLETELY SECURE, NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SAME. WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. NO STATEMENT OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US IN ANY MEANS OR FASHION SHALL CREATE ANY WARRANTY NOT EXPRESSLY AND EXPLICITLY SET FORTH IN THIS AGREEMENT.

NO CLAIM MAY BE ASSERTED BY YOU AGAINST US MORE THAN 12 MONTHS AFTER THE DATE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR NONPERFORMANCE OF THE SERVICES SHALL BE FOR US TO USE COMMERCIALY REASONABLE EFFORTS TO ADJUST OR REPAIR THE SERVICES.

TO THE EXTENT APPLICABLE LAW PERMITS, YOU RELEASE US FROM ANY CLAIMS OR LIABILITY RELATED TO (A) YOUR PRODUCTS, (B) ANY CONTENT POSTED ON OUR SERVICES OR IN ANY MATERIALS YOU SEND USING THE SERVICES, AND (C) ANY PROBLEMS THAT MAY ARISE FROM ANY REMOTE ACCESS TO YOUR COMPUTERS OR OTHER SYSTEMS YOU PROVIDE TO OUR PERSONNEL OR AGENTS FOR THE PURPOSE OF TROUBLESHOOTING ISSUES. YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 (IF YOU ARE A CALIFORNIA RESIDENT), AND ANY SIMILAR PROVISION IN ANY OTHER JURISDICTION (IF YOU ARE A RESIDENT OF SUCH JURISDICTION).

XIV. LIMITATION OF LIABILITY.

EXCEPT WITH RESPECT TO DEATH OR PERSONAL INJURY DUE TO OUR GROSS NEGLIGENCE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE,

SHALL MENUSIFU OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, ACCOUNT PROVIDERS, LICENSORS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "MENUSIFU") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF MENUSIFU SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY, AND REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE MAXIMUM AGGREGATE LIABILITY TO YOU ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE ACCRUAL OF THE APPLICABLE CLAIM, LESS ANY DAMAGES PREVIOUSLY PAID BY US TO YOU IN THAT TWELVE (12) MONTH PERIOD. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

YOU AGREE THAT WE HAVE SET OUR FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THEY REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS), AND THAT THEY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

XV. MISCELLANEOUS.

1. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

2. Each party agrees that this Agreement, together with any Order Form entered into by the parties, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement and any Order Form entered into by the parties pertaining to such subject matter, and that all waivers and modifications must be in writing signed by both parties, except as otherwise provided herein. However, in the event of a conflict between the provisions of this Agreement and any Order Form entered into by the parties, the terms of such Order Form shall prevail. No delay or omission by either party in exercising any right or remedy under this Agreement, an Order Form, or existing at law or equity shall be considered a waiver of such right or remedy.

3. Assignment. You may not assign any of your rights hereunder. We may assign all rights to any other individual or entity in our sole discretion.

4. You agree to execute any and all documents and take any other actions reasonably required or necessary to effectuate the purposes of this Agreement.

5. We are not liable for any failure, default or delay in the performance of any part of the Services or of our obligations under this Agreement if such default or delay is caused, directly or indirectly, by forces

beyond our reasonable control, including fire, flood, acts of God, changes to law or regulations, embargoes, labor disputes, accidents, insurrection, epidemic, pandemic, acts of war (declared or undeclared) or terrorism, riots, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for us to perform our obligations hereunder, including acts of hackers or third-party internet service providers.

6. Our affiliates, underlying service providers, business partners, third-party suppliers and providers, account providers, licensors, officers, directors, employees, distributors and agents are expressly made third party beneficiaries of this Agreement. Except as set forth in the immediately preceding sentence, nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective permitted successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

7. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties. Neither party, by virtue of this Agreement, will have any right, power, nor authority to act or create an obligation, express or implied, on behalf of the other party.

8. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

9. You hereby submit to the exclusive jurisdiction of the American Arbitration Association ("AAA") in connection with any dispute relating to, concerning or arising out of this Agreement, whether in contract, tort, fraud, misrepresentation or any other legal theory. The arbitration will be conducted before a single arbitrator and will be held at the AAA location in Boston, Massachusetts, unless you are a "consumer" as defined under the AAA rules. Disputes with consumers, as therein defined, will be resolved by binding arbitration conducted under the AAA's Consumer Arbitration Rules, as applicable. Consumers may request that the arbitration occur in or near the city/state stated in your account record with us. The procedures for commencing an arbitration are available here (provided however, that you may assert claims in small claims court, if your claims qualify and so long as the matter remains in such court only on an individual, non-class basis).

ARBITRATION MUST BE ON AN INDIVIDUAL BASIS. THIS MEANS NEITHER YOU NOR WE MAY JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CUSTOMERS, SUBSCRIBERS OR USERS, OR LITIGATE IN COURT OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. Only a court, and not an arbitrator, shall determine the validity and effect of the class action waiver. Even if all parties have opted to litigate a claim in court, you or we may elect arbitration with respect to any claim made by a new party or any new claims later asserted in that lawsuit. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Section. In the event you are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, we will pay as much of your filing, administrative, and arbitrator fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. If you initiate a

litigation or any other proceeding against us in violation of this paragraph, you agree to pay our reasonable costs and attorneys' fees incurred in connection with its enforcement of this paragraph. The parties shall maintain the confidential nature of the arbitration proceeding and any award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of conflict or choice of law rules. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

10. Your violation of this Agreement may cause irreparable harm to us. Therefore, we have the right to seek injunctive relief or other equitable relief if you violate this Agreement.

Updated on May 8th, 2023.