

**SPILLOVER<sup>SM</sup>**  
**STANDARD TERMS AND CONDITIONS**

**THESE SPILLOVER<sup>SM</sup> STANDARD TERMS AND CONDITIONS** (the “**Spillover Standard Terms**”) govern that certain Marketing Services Agreement which refers to these Spillover Standard Terms and Conditions (the “**Marketing Services Agreement**”) between your company (“**Client**”) and EZLinks Golf LLC (for purposes of this Agreement, “**Spillover**”). In exchange for the consideration set forth in the Marketing Services Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both parties, Client and Spillover agree as follows, intending to be legally bound:

**AGREEMENT**

1. **The Agreement.** Spillover will provide to Client the Marketing Services as agreed in the Marketing Services Agreement, subject to Client’s payment of the Consideration as set forth therein and all terms and conditions of the Marketing Services Agreement and these Spillover Standard Terms. Together, the Marketing Services Agreement and these Spillover Standard Terms constitute one binding agreement between the parties (the “**Agreement**”). The Agreement shall become legally binding on the parties on the date on which the Services Agreement is signed by Spillover (the “**Effective Date**”). The information in the Services Agreement regarding the amount of Consideration to be paid by Client, the payment process, and the Term, supersede any directly conflicting terms in these Spillover Standard Terms. For all other purposes, these Spillover Standard Terms shall control.

**DEFINITIONS**

2. **General.** All terms defined in the Services Agreement and capitalized herein shall have the meaning assigned to them in the Services Agreement. All other capitalized terms used herein shall have the meaning assigned to them below or elsewhere in the text of this Agreement:
  - a. “**Activation Date**” means a date to be agreed by the parties that is customarily agreed within the first three (3) months after the Effective Date, on which Spillover is responsible to ensure that the Marketing Services are activated and ready for usage (subject to Section 10(a) or a Force Majeure Event). For purposes of this definition, delays in activation caused by Client will not alter the agreed “Activation Date” as that term is used in Section 12 (Term and Termination) and Section 16 (Fees and Payments)
  - b. “**Client Materials**” means the materials, trademarks, software code, designs, data, content, images and information provided by or on behalf of Client for inclusion in the Marketing Services and/or for promotional use by Spillover as permitted hereunder, and includes Client’s and Restaurants’ names and logos. For clarity, the Client Materials include any of the foregoing even if they are not provided directly by Client to Spillover but are otherwise approved by Client (e-mail will suffice) for use by Spillover.
  - c. “**Customer(s)**” means actual and prospective customer and/or other guests of the Restaurant(s).
  - d. “**Intellectual Property**” means all copyrights, patents, rights to inventions, trademarks, domain names, rights in trade dress, publicity rights, goodwill, rights in designs, database rights, rights to use and to protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to obtain renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which exist now or in the future in any part of the world.
  - e. “**Marketing Services**” means the services listed by name in the Services Agreement, which Client has agreed to purchase and which Spillover has agreed to provide to Client. For clarity, each Marketing

Service may consist of professional services, development/support services, licensed software services, or some combination thereof.

- f. **“Restaurant(s)”** means those restaurants that are owned, operated, and/or otherwise affiliated with Client, as listed in the Marketing Services Agreement, for which the Marketing Services will be used.

**“Spillover Materials”** means the Work Product and any other materials, trademarks, software code, designs, website designs, data, content, images and information provided by or on behalf of Spillover for inclusion in the Marketing Services, and all modifications or derivatives thereof.

- g. **“Work Product”** means the inventions and works of authorship, created, captured or developed in whole or in part by Spillover while providing or preparing to provide the Marketing Services for Client. Work Product may include works of authorship created by Spillover prior to the Effective Date.

### PROVISIONS APPLICABLE TO SPECIFIC TYPES OF MARKETING SERVICES

3. Provisions Applicable to Professional Services. Spillover agrees to provide to Client the professional services identified in the Services Agreement, if any, for the Term of this Agreement and subject to its terms. By purchasing the professional services, Client grants to Spillover the right to: (A) create, access, post to, and manage the relevant software, websites, e-mail accounts, social media accounts, profiles, subscriptions and apps, in Client’s name using Spillover Materials, Client Materials, and publicly available materials and information; (B) acquire the relevant domain names, accounts, and handles using Client’s names and trademarks; and (C) access, collect, read, analyze, and otherwise use on Client’s behalf the information available on the above-mentioned websites, e-mail accounts, social media accounts, profiles, subscriptions and/or apps.
4. Provisions Applicable to Development/Support Services. Spillover agrees to provide to Client the support services identified as Marketing Services in the Services Agreement, if any, for the Term of this Agreement and subject to its terms, including the following:
- a. *Website Development Services.* Spillover will liaise with Client to develop the look and feel of the website based on available templates as seen on [www.Spillover.com](http://www.Spillover.com), as applicable, and will develop and deliver the website on a time table to be agreed by the parties, recognizing that late delivery by Spillover will be excused to the extent caused by the Client or by factors outside of Spillover’s control. The website will be deemed accepted by Client once the Website is launched live and / or the Client begins conducting services or transactions via the website.
- b. *Web Hosting Services.* Spillover will provide web hosting services twenty-four (24) hours per day, seven (7) days per week, subject to the Service Level. **“Service Level”** means that Spillover will use commercially reasonable efforts to make the relevant Marketing Services available at least 98% of the time such Marketing Services are needed by Client to conduct its business, measured over a calendar year, excluding unavailability due to Permitted Interruptions. **“Permitted Interruptions”** means any service downtime or degradation except as attributable to (A) scheduled downtime; (B) failure of third party products, software, services, or networks; (C) failures due to Client’s changes to the relevant software or equipment; (D) a Force Majeure Event; or (E) any period of suspension as authorized in this Agreement.
- c. *Support and Maintenance Services.* Spillover and Client will designate contact numbers and/or e-mail addresses so that Client can request the purchased support and maintenance services. Spillover will respond to each request as appropriate given the nature of the problem, and will use commercially reasonable efforts to ensure that Spillover-provided Marketing Services meet the Service Level as defined above.

- d. *Other Support Services.* If agreed in the Marketing Services Agreement, Spillover will provide other support services to Client on a case-by-case basis.
5. Provisions Applicable to Licensed Software. Spillover agrees to provide to Client the licensed software identified as a Marketing Service in the Marketing Services Agreement, if any, for the Term of this Agreement and subject to its terms. The relevant licensed software will be delivered electronically, on tangible media, or by other means on or before the date referenced in the Marketing Services Agreement. Spillover hereby grants to Client a non-exclusive, non-sublicensable, and non-transferable license during the Term to use the licensed software solely for Client's internal business purposes.

## PROVISIONS SPECIFIC TO ALL MARKETING SERVICES

6. Change of Account. In the event that Client determines that a change in the scope of Marketing Services is desired, Client shall notify Spillover and the parties will negotiate in good faith to determine the mutually agreed changes to the scope of Marketing Services and a corresponding adjustment of Consideration, if any, in connection with such change, provided that neither party is under any obligation to agree to any changes to the Marketing Services and/or the Consideration. Any and all changes to the Marketing Services and/or the Consideration require a written change of account signed by both parties (the "**Change of Account**"). A fully signed Change of Account shall constitute an amendment to the Agreement and will be included in the definition of the "Agreement" as used herein.
7. Ownership of Materials.
  - a. *Client Owns Client Materials.* As between Client and Spillover, Client shall continue to own all Intellectual Property rights and all other rights associated with the Client Materials. For the duration of the Term, Client hereby provides a royalty free license to Spillover to use and to reproduce, modify, distribute, display, and to make modifications to and derivative works of the Client Materials in the course of providing the Marketing Services to Client, to market and promote the Restaurant(s) and Spillover' business, and (if applicable) to market, promote and sell Restaurant services. The foregoing license applies to Spillover' use of Client Materials in all media and via Spillover platforms and/or its various affiliated, contracted, or licensed marketing and sales channels. Client represents and warrants that (A) it owns, or has the necessary permissions, to grant the license contained in this Section 7.a.; (B) the Client Materials do not violate any third-party Intellectual Property rights; and (C) the Client Materials contain no false or defamatory material or material that violates or advocates the violation of any law or regulation.
  - b. *Spillover Owns Spillover Materials.* As between Client and Spillover, Spillover shall continue to own all Intellectual Property rights and all other rights associated with the Spillover Materials. Spillover hereby provides a royalty free license to Client to use and display the Spillover Materials as contained in the Marketing Services for the duration of the Term. Spillover represents and warrants that (A) it owns, or has the necessary permissions, to grant the license contained in this Section 7.b.; (B) the Spillover Materials do not violate any third-party Intellectual Property rights; and (C) the Spillover Materials contain no false or defamatory material or material that violates or advocates the violation of any law or regulation. For clarity, Client is not authorized to use any Marks or other Intellectual Property of the PGA TOUR.
8. Trademarks. Each of Client and Spillover owns its own names and trademarks, and all goodwill associated therewith (the "**Marks**"), and will not use (or facilitate the use by others of) the names or trademarks of the other apart from the relevant licenses set forth in Section 7, without the prior written consent of the other party. Each party hereby acknowledges the other party's right, title and interest in and to its Marks and such other party's exclusive right to use, register and license the use of its Marks. Any and all goodwill arising from the use of a party's Marks hereunder shall inure solely to the benefit of the owner, and neither during

nor after the termination of this Agreement shall either party assert any claim to the other's Mark(s). Neither party shall take any action that could be detrimental to the goodwill associated with the other's Marks. Each party covenants and agrees that it will not, during or after the Term: (i) claim or assert title to any Mark of the other party, (ii) attempt to register any Mark of the other party anywhere in the world, (iii) claim any right to use any Mark of the other party, except to the extent expressly permitted by this Agreement, (iv) use any other trademark, brand name, trade name, symbol, design (including a translation) that the other party reasonably believes is confusingly similar to the Mark(s) of such other party, (v) contest or deny the validity or enforceability of the other party's Mark(s) or of such other party's interest therein, or (vi) oppose, object to, or seek to cancel any registration of the other party's Mark(s), nor aid others in doing so. Client acknowledges and agrees that an automatically generated identifying footer stating "Powered by Spillover", "Powered by EZLinks" or a similar message may appear on Marketing Services as appropriate.

9. Data Capture and Usage.

- a. *Client/Customer Data.* Client agrees and acknowledges that (i) Spillover is not limited in its use of Client/Customer data (Client/Customer data is defined as information from Client's website(s) and email databases managed by Spillover hereunder) throughout the term of the Agreement, (ii) Spillover has no obligation to retain any Client/Customer data after termination of this Agreement (but may, at its election, do so), and (iii) such information becomes Spillover property and may be irretrievably deleted after thirty (30) days following termination.
- b. *Privacy and Permissions.* Client is responsible for publishing its own privacy policy in conformity with applicable law to govern its collection of Customer data, and to allow for the usage and/or sharing of such data as referenced above. Client acknowledges that Client is responsible to secure consent to use the Customer information or data for the particular marketing methods (e.g., text messaging, e-mailing, etc.) undertaken hereunder by Client or by Spillover on Client's behalf, and that it is Client's sole responsibility to ensure it has the requisite consent from individuals, as may be needed, prior to Client or Spillover engaging in any communication with Customers. Client agrees also to be bound by the Spillover.com privacy policy accessible at [www.spillover.com](http://www.spillover.com).
- c. *Security.* Customer is responsible to employ reasonable physical protections to guard Client's equipment, facilities, systems, and networks used in connection with the Marketing Services, and to guard against unauthorized access to the same. Client will take reasonable measures to avoid the uploading or other infiltration of viruses, malware, spyware and other harmful code into such hardware, systems, and networks. Spillover reserves the right to deny access to Marketing Services to any user that Spillover reasonably believes poses a security risk.

10. Items for Which Spillover is Not Responsible. The parties agree that Spillover is not responsible or liable under this Agreement for:

- a. Delays in Spillover' performance to the extent caused by Client, or by Permitted Interruptions.
- b. Client's legal terms of service, privacy policies, or Client's other legal compliance requirements.
- c. Client's failure to control access to Client's equipment, facilities, systems, and networks.
- d. The uploading or other infiltration of harmful code, viruses, malware, spyware and other harmful code into Client's hardware, systems, and networks which is not the result of Spillover' gross negligence or willful misconduct.
- e. Obtaining permission for Client to use any distribution list.
- f. Client's back-up of its software, systems, and networks (including without limitation, back-ups of Client/Customer Data).
- g. The quality or speed of Client's network connectivity.
- h. Changes to Client's hardware, software, network or connectivity made by anyone other than Spillover after initiation of the Marketing Services.

- i. Any license fees payable to third parties for use of Client Materials, or any third-party permissions needed prior to using Client Materials.
- j. The nature or content of Client Materials, which includes (without limitation) social media content posted or provided by Client. Client assumes all risks associated with the usage of Client Materials and the reliance by third parties on its accuracy, completeness, or usefulness.
- k. Spillover' removal of Client Material from any Marketing Service upon Spillover' reasonable determination that such Client Material is in breach of any term of this Agreement.
- l. Any third-party warranties or other commercial terms applicable to third party hardware or software.

11. Client's Key Responsibilities. Client covenants, represents, and warrants that:

- a. Client is duly organized under the laws of its home state.
- b. Client will use the Marketing Services only in compliance with this Agreement and all applicable laws.
- c. Client will not use the Marketing Services in a manner that violates the Intellectual Property rights, privacy rights, or other rights of any third party.
- d. Client will not remove the copyright, trademark, or other Intellectual Property designations from the Marketing Services.
- e. Client is not domiciled in, nor a resident of, and is not under control of, any country to which the United States has prohibited export.
- f. Neither Client nor any of its board members, executives, or shareholders are listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, or Specially Designated Narcotic Traffickers, nor on the United States Department of Commerce Table of Denial Orders.
- g. Client will not, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms constituting or contained within the Marketing Services.
- h. Client will not modify or create derivative works based on the Marketing Services, or copy (other than in connection with its authorized use of the Marketing Services), distribute, pledge, assign, or otherwise transfer or encumber rights to the Marketing Services.
- i. Client will not rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Marketing Services or information or results derived from the Marketing Services to any third party, including without limitation via any time-sharing, service bureau, software as a service, cloud, or other similar service.
- j. Client will not use the Marketing Services for the benefit of any third party, nor to conduct a comparative analysis with third party competitors of Spillover.
- k. Client will not use Client Materials, Spillover Materials or any other materials to imply that Client or its communications are authorized or endorsed by Spillover.

12. Term and Termination. This Agreement is legally binding on the parties as of the Effective Date. The term during which the Marketing Services will be provided shall begin on the Activation Date and will continue for the time period designated in the Marketing Services Agreement; or if none, then for a period of ninety (90) days (in either case, the "**Initial Term**"). This Agreement shall renew automatically for successive periods as indicated in the Marketing Services Agreement; or if none, for successive periods of ninety (90) days (each a "**Renewal Term**," and together with the Initial Term, the "**Term**"), under the same terms and conditions, unless Client gives written notice (e-mail will suffice) to Spillover at least ninety (90) days prior to the end of the Initial Term or then-current Renewal Term of Client's intention that the Term should expire at the end of the Initial Term or then-current Renewal Term.

- a. Either party may terminate the Agreement, effective on written notice to the other party, if the other party commits a material breach of this Agreement, and such breach is (A) incapable of being cured; or (B) although capable of being cured, remains uncured sixty (60) days after the non-breaching party provides the breaching party with written notice describing such breach.

- b. Spillover may terminate this Agreement on thirty (30) days' notice to Client, for its convenience, in its sole discretion.
  - c. Either party may terminate the Agreement, effective on written notice to the other party, if the other party (A) becomes insolvent or generally unable to pay its debts as they become due; (B) files or has filed against it a petition for bankruptcy or becomes subject, voluntarily or involuntarily, to any bankruptcy proceeding; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by court order to take charge of or sell any material portion of its property or business.
  - d. Notwithstanding anything in Section 12.a. above, Spillover may terminate this Agreement, effective on written notice to Client, if (A) Client fails to pay any Consideration hereunder and such failure continues for fifteen (15) days after Client receives written notice from Spillover; or (B) Client is found in violation of any covenant, representation or warranty in Sections 7.a. or 11 of this Agreement.
13. Effect of Expiration or Termination. Upon the expiration or termination of this Agreement for any reason, (A) Client shall immediately cease use of all Marketing Services, (B) all of Client's rights and licenses to use the Marketing Services shall terminate, as shall each party's respective permissions to use the materials provided by the other hereunder, and (C) Client shall return to Spillover all Spillover Materials, and Spillover Data then in its possession or control. Once Client has made full payment for the value of all Consideration due to Spillover under the Agreement, and provided that Client is not otherwise in breach, Spillover will provide to Client all Client Materials, Client/Customer Data, and Client profiles, passwords, websites, apps, accounts, and domain names then in its possession or control. (A reasonable service fee may be required for provision of Client/Customer Data.) In the event Spillover is not paid all amounts due within thirty (30) days of such expiration or termination, then Spillover may delete, disable, alter, remove, retain, or otherwise dispose of all Client Materials, Client/Customer Data, and Client profiles, passwords, websites, apps, accounts, and domain names then in its possession or control.
14. Suspension of Marketing Services. Spillover reserves the right to suspend all or a portion of the Marketing Services: (A) for up to thirty (30) days in the event that Spillover reasonably believes the Client Materials are in violation of Client's representations or warranties, or if Spillover reasonably believes the Client is using the Marketing Services or Client/Customer Data for any purpose not authorized under this Agreement, including but not limited to any unlawful purpose or in violation of any third party's rights; (B) for up to sixty (60) days in the event Client's payment of Consideration hereunder is more than thirty (30) days in arrears; or (C) during any cure period referenced in Section 12.a. or 12.b. above relating to a breach of the Agreement by Client. During any such period of suspension, Client shall remain responsible for the payment of all Consideration due hereunder. At the end of any such suspension period, Spillover must either restore the Marketing Services or pursue termination of the Agreement as set forth in Section 12. If Marketing Services are restored, a reconnection fee may be required.
15. Client's Responsibility for Restaurant(s). The parties agree that Client shall be liable for any breach or default of this Agreement by the Restaurant(s) or for any other actions or omissions of any Restaurant with respect to this Agreement and/or the Marketing Services.
16. Fees and Payments. The agreed pricing for the Marketing Services and the general payment terms are reflected in the Marketing Services Agreement (the "**Consideration**"), and Client agrees to pay such Consideration on such terms. In addition:
- a. Client agrees to deliver first payment on the Effective Date of the Agreement.
  - b. Client agrees to make payments on the first business day of each month, unless otherwise agreed in the Marketing Services Agreement.

- c. Spillover charges and collects in advance for use of the Services. Client authorizes Spillover to, and Spillover will automatically charge Client's credit card or EFT (or issue an invoice if Spillover approves such an arrangement) for the fee(s) during the Initial Term, and Spillover will thereafter automatically bill Client's credit card or EFT (or issue an invoice to Client) for Renewal Term fee(s). The renewal fee(s) will be equal to the then-current Service fee in effect at the time of such Renewal.
- d. Unless otherwise stated in the Marketing Services Agreement, Spillover' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Client is responsible for paying all Taxes associated with Client's purchases hereunder or they may be added by Spillover to the fees if required by State or federal laws.
- e. Client agrees to provide Spillover with complete and accurate billing and contact information. This information includes Client's legal company name, street address, email address, and name and telephone number of an authorized billing contact and license administrator. Client agrees to update this information within thirty (30) days of any change to it. If the contact information Client has provided is false or fraudulent, Spillover reserves the right to terminate this Agreement and/or Client's access to the Services in addition to any other legal or equitable remedies it may have.
- f. For credit card payers, service fees shall accrue at the start of the initial Term, and Client's credit card will be charged at that time. If Client has been approved for payment by invoice, invoices will be generated at the start of the initial Term, and thereafter approximately one month in advance of the start of any Renewal Term, and shall be due within thirty (30) days. Client's account will be considered delinquent (in arrears) if payment in full is not received within thirty (30) days of the date of the invoice.
- g. If Client believes that the bill is incorrect, Client must notify Spillover in writing within thirty (30) days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.
- h. In addition to any other rights granted to Spillover herein, delinquent invoices (accounts in arrears) are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection, including attorney's fees.
- i. If Client or Spillover initiates termination of this Agreement, Client will be obligated to pay the balance due on Client's account computed in accordance with this Section, and Client agrees that Spillover may charge such unpaid fees to Client's credit card or otherwise bill Client for such unpaid fees.

17. Indemnification. Client shall indemnify, defend and hold harmless Spillover, Spillover' affiliates, and their respective members, managers, directors, officers, employees and agents (the "**Spillover Parties**") from and against any and all third party demands, claims, actions or proceedings seeking a remedy for personal injury (including death) to any person, damage to the property (real, personal or intellectual) of any person or entity, or any financial or commercial harm or loss, and all fines, judgments, settlements, penalties, liabilities, losses, costs and expenses (including reasonable attorneys' fees and expenses) suffered by any Spillover Party in direct connection therewith, to the extent caused by (A) Client's breach of any covenant, representation, warranty, or other material term of this Agreement; (B) Client's negligence or willful misconduct; (C) any actual or alleged harm to any person while on the premises of Client's Restaurant(s); or (D) the violation by Client of any applicable law or regulation in its use of the Marketing Services, including without limitation all laws and regulations governing marketing contests and sweepstakes. For purposes of (A) through (D) above, the term "Client" shall be deemed to mean Client, the Restaurant(s), their affiliates, or any of their respective directors, officers, members, Customers, employees, agents, contractors, sub-contractors or permitted assignees.

18. Disclaimer of Warranties. THE MARKETING SERVICES ARE PROVIDED ON AND "AS IS" BASIS. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 7.b. ABOVE, SPILLOVER MAKES

NO WARRANTY WHATSOEVER WITH RESPECT TO THE MARKETING SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR (C) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. SPILLOVER DOES NOT WARRANT AGAINST INTERFERENCE WITH CLIENT'S ENJOYMENT OF THE MARKETING SERVICES OR THAT THE MARKETING SERVICES WILL MEET CLIENT'S REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ANY MARKETING SERVICE WILL CONTINUE TO BE MADE AVAILABLE FOR PURCHASE BEYOND THE TERM, THAT DEFECTS IN THE MARKETING SERVICES WILL BE CORRECTED, OR THAT THE MARKETING SERVICES WILL BE COMPATIBLE OR WILL WORK WITH ANY THIRD-PARTY HARDWARE, SOFTWARE, APPLICATIONS OR THIRD-PARTY SERVICES. ACTIVATION OF THE MARKETING SERVICES MAY AFFECT THE USABILITY OF THIRD PARTY HARDWARE, SOFTWARE, APPLICATIONS OR THIRD-PARTY SERVICES.

19. Limitations on Types of Damages. THE MARKETING SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SPILLOVER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS. IN NO EVENT SHALL SPILLOVER OR ANY OF ITS AFFILIATES, MEMBERS, OR REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO CLIENT OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, CORRUPTION OR LOSS OF DATA, SECURITY BREACH, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION, OR CLIENT'S INABILITY TO USE THE MARKETING SERVICES, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT CLIENT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.
20. Maximum Liability. EXCEPT FOR INSTANCES IN WHICH APPLICABLE LAW DOES NOT ALLOW SUCH LIMITATIONS, IN NO EVENT SHALL SPILLOVER' OR ANY OF ITS AFFILIATES', MEMBERS', OR REPRESENTATIVES' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (A) THE RETAIL VALUE OF IN-KIND CONSIDERATION PROVIDED BY CLIENT AND RECEIVED BY SPILLOVER DURING THE PAST THREE (3) MONTHS, (B) THE AMOUNT OF CASH CONSIDERATION PAID BY CLIENT AND RECEIVED BY SPILLOVER IN THE PAST THREE (3) MONTHS, OR (C) \$1,000.
21. If Remedy Fails of Essential Purpose. THE LIMITATIONS OF LIABILITY PROVISIONS SET FORTH IN SECTIONS 19 AND 20 SHALL APPLY EVEN IF CLIENT'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. Client acknowledges and agrees that the parties entered into this Agreement in reliance upon the limitations of liability set forth in Sections 19 and 20, that those limitations reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties.
22. Force Majeure. Spillover shall not be deemed in breach of this Agreement nor liable for a failure or delay in performing any of its obligations under this Agreement if such failure or delay results from events, circumstances or causes beyond its reasonable control, including without limitation network outages, transmission failures, system failures inherent in the technology industry (such as hacks, malware, hardware failures, or software failures), changes in law or regulations, fire, flood, disaster, civil riot, terrorism, or war



Last modified: November 1, 2017

(each a “**Force Majeure Event**”). If the period of delay or non-performance by Spillover continues for ninety (90) days, Client may terminate this Agreement by giving fifteen (15) days written notice to Spillover.

23. Reservation of Rights. All of Client’s and Spillover’ rights and interests not expressly granted to the other herein are reserved to them, respectively.
24. Remedies. Except as expressly stated herein, all rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.
25. Miscellaneous. This Agreement (A) is governed by and shall be construed in accordance with the laws of the State of Illinois, and the parties hereby submit to the exclusive jurisdiction and venue of the State Courts of Illinois located in Cook County for all disputes arising under this Agreement; (B) contains the entire understanding and agreement of the parties with respect to its subject matter; (C) supersedes all prior and contemporaneous oral or written statements, proposals, quotes, representations or warranties by either party regarding this Agreement or its subject matter; (D) cannot be altered or amended except in a writing signed by the parties; (E) shall not be construed as establishing any type of partnership, joint venture, express or implied agency, employer-employee or special fiduciary relationship between the parties; (F) may not be transferred or assigned by Client in whole or in part without the prior written permission of Spillover, any transfers or assignments inconsistent with this sub-paragraph (F) being null and void; (G) may be transferred or assigned by Spillover in whole or in part, without the consent of Client, including to an affiliate or to an entity that acquires all or substantially all of the business or assets of Spillover to which this Agreement pertains, whether by merger, reorganization, acquisition, sale, or otherwise; (H) is binding upon the parties, their lawful successors and permitted assigns, and (I) may be executed in counterparts which, taken together, shall constitute one binding agreement. In any action or proceeding to enforce this Agreement, the prevailing party will be entitled to recover its costs and attorney’s fees. All waivers must be in a writing signed by the waiving party, and no such waiver may be construed as an ongoing or continuing waiver of the same or any future matter. Sections 1, 2, 7-9, 13, 15-25, and all provisions of the Marketing Services Agreement pertaining to the payment of consideration shall survive the termination (for any reason) or expiration of this Agreement. No person who is not a party to this Agreement will have any equitable or other rights by virtue of this Agreement. Each provision of this Agreement is severable and the invalidity of any part or paragraph shall not affect the enforceability of the remainder. Notices shall be sent to the respective signatories at the physical or e-mail addresses listed on the Marketing Services Agreement. Signatures on the Marketing Services Agreement provided by electronic means shall be binding as if originals.