

FLASHTRACT MASTER SERVICE AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF FLASHTRACT SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY ACCEPTING THIS AGREEMENT, BY (1) CREATING A FLASHTRACT ACCOUNT OR (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT (UNLESS CUSTOMER AND FLASHTRACT HAVE ENTERED A WRITTEN GOVERNING MASTER SERVICE AGREEMENT, IN WHICH CASE SUCH WRITTEN AGREEMENT WILL GOVERN). IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Flashtract's direct competitors are prohibited from accessing the Services, except with Flashtract's prior written consent. In addition, the Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Subscription Agreement.

"Authorized Users" means Customer's employees, consultants, clients, contractors, agents, and other third parties which Customer transacts business (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement, (ii) for whom access to the Services has been purchased hereunder, and (iii) for whom Customer has supplied a user identification and password (for Services utilizing authentication).

"Commercially Reasonable Efforts" shall not require Flashtract to engage in conduct that would have a materially adverse effect on the Flashtract, take any action that would cause Flashtract to incur costs or suffer any other detriment that is out of reasonable proportion to its benefit under the Agreement, take any action that would subject it to liabilities, disregard its own business interests, take any illegal actions or take any action that would harm its existence or solvency.

"Content" means information obtained by Flashtract from publicly available sources or its third party content providers and made available to Customer through the Services or pursuant to an Order Form, as more fully described in the Documentation.

“Customer” means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

“Customer Data” means electronic data and information submitted by or for Customer to the Services, excluding Content and Non-Flashtract Applications.

“Documentation” means the Flashtract Security & Privacy Policy, Order Form, Sales Proposal, and any usage guides and policies related to the Services that may be applicable, each of which may be updated from time to time and accessible by contacting Flashtract requesting this information.

“Flashtract” means the Flashtract, Inc., a Delaware corporation.

“Force Majeure Event” any unavailability of the Services caused by circumstances beyond Flashtract’s reasonable control, including, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror or war, passage of law or any action taken by a governmental or public authority (including imposing an embargo or blockade, export/import restriction), governmental shutdown (complete or partial), strike or other labor problem (other than one involving Flashtract employees), Internet service provider failure, outage or delay, Non-Flashtract Application, or denial of service attack

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Non-Flashtract Application” means a web-based, cloud-based, mobile, offline or other software application functionality provided by Customer or a third party that interoperates with a Service provided by Flashtract. Non-Flashtract Applications, other than those obtained or provided by Customer, are identifiable as such.

“Order Form” means a statement of work, ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Flashtract or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Purchased Services” means Services that Customer or Customer’s Affiliate purchases under an Order Form or online purchasing portal

“Services” means the products and services that are ordered by Customer under an Order Form or online purchasing portal and made available online by Flashtract, including associated Flashtract offline or mobile components, as described in the Documentation. “Services” exclude Content and Non-Flashtract Applications.

2. FLASHTRACT RESPONSIBILITIES

2.1. **Provision of Purchased Services.** Subject to and conditioned on Customer’s

compliance with the terms and conditions of this Agreement, Flashtract will (a) make the Services and Content available to Customer pursuant to the terms and conditions of this Agreement, and the applicable Order Form(s) and Documentation, (b) provide Flashtract support, if applicable, for the Purchased Services to Customer, (c) use Commercially Reasonable Efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Flashtract shall give advance electronic or telephonic notice), and (ii) any unavailability caused by a Force Majeure Event, and (d) provide the Services in accordance with laws and government regulations applicable to Flashtract's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services), and subject to Customer's use of the Services in accordance with this Agreement, the Documentation and the applicable Order Form(s).

2.2. **Protection of Customer Data.** Flashtract will maintain reasonable protection of the security, confidentiality and integrity of Customer Data as stated in Flashtract's Security & Privacy Policy.

2.3. **Flashtract Personnel.** Flashtract will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Flashtract's obligations under this Agreement, except as otherwise specified in this Agreement.

3. USE OF SERVICES AND CONTENT

3.1. **Subscriptions.** Unless otherwise provided in the applicable Order Form or Documentation, (a) Purchased Services and access to Content are purchased as subscriptions for the Initial Term stated in the applicable Order Form or in the applicable online purchasing portal and are subject to automatic renewal unless notice of termination is provided in accordance with Section 11.2, (b) subscriptions for Purchased Services may be added during the Initial Term or Renewal Term of a subscription at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Flashtract regarding future functionality or features.

3.2. **Usage Limits.** Services and Content are subject to usage limits specified in Order Forms and Documentation. If Customer exceeds a contractual usage limit, Flashtract may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding Flashtract's efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Flashtract's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.

3.3. **Customer Responsibilities.** Customer shall (a) be responsible for Authorized Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any

Non-Flashtract Applications with which Customer uses Services or Content, (c) use Commercially Reasonable Efforts to prevent unauthorized access to or use of Services and Content, and notify Flashtract promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, Documentation, Order Forms, payment network rules, and applicable laws and government regulations, (e) comply with terms of service of any Non-Flashtract Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Authorized Users that in Flashtract's judgment threatens the security, integrity or availability of Flashtract's services, may result in Flashtract's immediate suspension of the Services; provided, however, Flashtract will use Commercially Reasonable Efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension, and (f) in the event Customer becomes aware of any actual or threatened activity prohibited by Section 3.4, immediately take all reasonable and lawful measures within its control that is necessary to stop the activity or threatened activity and to mitigate its effects and notify Flashtract of any such actual or threatened activity.

3.4. Usage Restrictions. Customer shall not (a) make any Service or Content available to anyone other than Customer or Authorized Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-Flashtract Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights, (d) use a Service or Non-Flashtract Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access or use any of Flashtract intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

3.5. Removal of Content and Non-Flashtract Applications. If Customer receives notice that Content or a Non-Flashtract Application must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in Flashtract's judgment continued violation is likely to reoccur, Flashtract may disable the applicable Content, Service and/or Non-

3.6. Flashtract Application. If requested by Flashtract, Customer shall confirm such deletion and discontinuance of use in writing and Flashtract shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In

addition, if Flashtract is required by any third-party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, Flashtract may discontinue Customer's access to Content through the Services.

3.7. **Prohibited Activities.** Customer represents, warrants and agrees that neither it, nor its Authorized Users will accept or send payments or use the Services in connection with the following activities, items or services: adult content, bail bonds, bankruptcy lawyers, check cashing, or payment for a dishonored check or for an item deemed uncollectible by another merchant, credit counseling or credit repair agencies, credit protection or identity theft protection services, counterfeit or possibly counterfeit goods, debt collection, consolidation, or reduction services, distressed property sales and marketing, door to door sales, drugs, alcohol, or drug paraphernalia, or items that may represent them, factoring, liquidators, bailiffs, bail bondsmen, financial services such as cash advances, loans, prepaid cards, wire transfers, or sales of money orders or foreign currency, gambling or betting, including lottery tickets, casino gaming chips, off-track betting, memberships on gambling-related internet sites and wagers at races, hate, violence, racial intolerance, or the financial exploitation of a crime, internet pharmacies or pharmacy referral sites, multi-level marketing businesses, pyramid or ponzi schemes, medical marijuana, obscene or pornographic items, prostitution, escort services, massage parlors, and other explicit sexually related services, unlawful activities or items, or activities or items that encourage, promote, facilitate or instruct others regarding the same, violent acts towards self or others, or activities or items that encourage, promote, facilitate or instruct others regarding the same, weapons, including replicas and/or ammunition. In the event Customer or an Authorized User violates this Section, Flashtract may suspend such Customer's and/or such Authorized User's access and use of the Services until such violation has been cured.

3.8. **Electronic Signatures.** Customers and Authorized Users consent to do business electronically while using Flashtract services. All documents electronically signed in Flashtract's software are legally binding and hold the same legal status as handwritten signatures for the purpose of validity, enforceability, and admissibility. Customers and Authorized Users also acknowledge that they intend to sign documents in Flashtract when they enter their 4-digit personal identification number (PIN) or if they click to sign a document while using Flashtract services. Customers and Authorized Users explicitly acknowledge that using their four-digit PIN to sign documents on behalf of their company in Flashtract signifies their status as an authorized signer for their company.

4. NON-FLASHTRACT PRODUCTS AND SERVICES

4.1. **Non-Flashtract Products and Services.** Flashtract or third parties may make available third-party products or services, including, for example, Non-Flashtract Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-Flashtract provider, product or service is solely between Customer and the applicable Non-Flashtract provider. Flashtract does not warrant or support Non-Flashtract Applications or other Non-Flashtract products or services, whether or not they are designated by Flashtract as "certified" or otherwise, unless expressly provided otherwise in an Order Form. Flashtract is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-Flashtract Application or its provider.

4.2. **Integration with Non-Flashtract Applications.** The Services may contain features designed to interoperate with Non-Flashtract Applications. Flashtract cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Flashtract Application ceases to make the Non-Flashtract Application available for interoperation with the corresponding Service features in a manner acceptable to Flashtract.

5. FEES AND PAYMENT

5.1. **Fees.** Customer will pay all fees specified in Order Forms in accordance with this Section 5. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, (iii) quantities purchased cannot be decreased during the relevant subscription term, and (iv) all fees are payable in U.S. Dollars.

5.2. **Invoicing and Payment.** If Customer provides credit card information to Flashtract, Customer authorizes Flashtract to charge such credit card for all Purchased Services listed in the Order Form for the Initial Term and any Renewal Term of the subscription as set forth in Section 11.2. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, Flashtract will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due net 30 days from the invoice date to the address or account specified in the Order Form or such other address or account as Flashtract may specify in writing from time to time. Customer is responsible for providing complete and accurate billing and contact information to Flashtract and notifying Flashtract of any changes to such information.

5.3. **Overdue Charges.** If any invoiced amount is not received by Flashtract by the due date, then without limiting Flashtract's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, plus a minimum charge of \$100, or the maximum rate permitted by law, whichever is lower, and/or (b) Flashtract may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section below.

5.4. **Suspension of Service and Acceleration.** If any charge owing by Customer under this or any other agreement for Services is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorized Flashtract to charge to Customer's credit card), Flashtract may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, Flashtract will give Customer at least 10 days' prior notice that its account is overdue before suspending Services to Customer.

5.5. **Payment Disputes.** Flashtract will not exercise its rights under Section 5.3 or Section 5.4 if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

5.6. **Taxes.** Flashtract's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Flashtract has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Flashtract will invoice Customer and Customer will pay that amount unless Customer provides Flashtract with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Flashtract is solely responsible for taxes assessable against it based on its income, property and employees.

6. PROPRIETARY RIGHTS AND LICENSES

6.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Flashtract, its Affiliates, its licensors and Content Providers reserve all of their right, title and interest in and to the Services and Content, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

6.2. **Access to and Use of Content.** Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.

6.3. **License by Customer to Flashtract.** Customer grants Flashtract, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-Flashtract Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for Flashtract to provide and ensure proper operation of, the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-Flashtract Application with a Service, Customer grants Flashtract permission to allow the Non-Flashtract Application and its provider to access Customer Data and information about Customer's usage of the Non-Flashtract Application as appropriate for the interoperation of that Non-Flashtract Application with the Service. Subject to the limited licenses granted herein, Flashtract acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-Flashtract Application or such program code.

6.4. **License by Customer to Use Feedback.** Customer grants to Flashtract and its Affiliates a worldwide, perpetual, irrevocable, royalty-free, freely assignable license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Authorized Users relating to the operation of Flashtract's or its Affiliates' services.

7. CONFIDENTIALITY

7.1. **Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Flashtract includes the Services and Content, and the terms and conditions of this

Agreement and all Order Forms (including pricing). Confidential Information of each party includes, financial information, contracts and other business-related documents, technology and technical information, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Flashtract services.

7.2. Protection of Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, Flashtract may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-Flashtract Application Provider to the extent necessary to perform Flashtract’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

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

8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

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

8.2. **Flashtract Warranties.** Flashtract warrants that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) Flashtract will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the “Integration with Non-Flashtract Applications” section above, Flashtract will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer’s exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.

8.3. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON INFRINGEMENT, THE IMPLIED WARRANTY OF TITLE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONTENT AND SERVICES ARE PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER. NO WARRANTY, GUARANTEE OR REPRESENTATION IS MADE THAT USE OR PROVISION OF THE SERVICES IS OR WILL BE ERROR FREE, DEFECT FREE, OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE SERVICES CAN OR WILL BE CORRECTED, OR THAT THE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS. FURTHER, FLASHTRACT DISCLAIMS ANY REPRESENTATION, GUARANTEE OR WARRANTY CONCERNING CUSTOMER’S RELIANCE UPON THE SERVICES OR OUTCOMES FROM THE SERVICES, OR THE ABILITY OR INABILITY ON THE PART OF THE CUSTOMER TO ACHIEVE AN OUTCOME THAT IT DECIDED TO PURSUE IN RELIANCE UPON THE SERVICES.

9. INDEMNIFICATION

9.1. **Indemnification by Flashtract.** Flashtract shall indemnify, defend, and hold harmless Customer (“Customer Indemnitee”) from and against any and all losses incurred by Customer Indemnitee resulting from any action by a third party (other than an Affiliate of Customer Indemnitee) that Customer’s use of the Services (excluding Customer Data and Non Flashtract Applications) in accordance with this Agreement infringes or misappropriates such third party’s U.S. intellectual property rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from: (a) Non-Flashtract Applications or Customer Data; (b) access to or use of the Services in combination with any hardware, system, software, network, or other materials or service not provided by Flashtract or specified for Customer’s use in the Documentation; (c) modification of the Services; (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Flashtract; or (e) act, omission, or other matter described in Section 9.2, whether or not the same results in any action against or losses by any Customer Indemnitee.

9.2. **Indemnification by Customer.** Customer shall indemnify, defend, and hold harmless Provider and its Affiliates, and each of its and their respective officers, directors,

employees, agents, successors, and assigns (each, a “Provider Indemnitee”) from and against any and all losses incurred by such Provider Indemnitee resulting from any action by a third party (other than an Affiliate of a Provider Indemnitee) arising out of or resulting from, or are alleged to arise out of or result from: (a) Customer Data, including any processing of Customer Data by or on behalf of Flashtract in accordance with this Agreement; (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including Flashtract’s compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any material contribution by Flashtract; (c) allegation of facts that, if true, would constitute Customer’s breach of any of its representations, warranties, covenants, or obligations under this Agreement; (d) any payment instructions or related information provided to Flashtract or Flashtract’s service providers, including any payment that Customer does not have adequate funds to cover; or (e) any criminal, negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

9.3. **Exclusive Remedy.** This Section 9 shall be the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any third-party claim described in this Section 9.

10. LIMITATION OF LIABILITY

10.1. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF FLASHTRACT, TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

10.2. **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER FLASHTRACT OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF THE REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

11.1. **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated as outlined below.

11.2. **Term of Purchased Subscriptions.** The initial term of each subscription shall be as specified in the applicable Order Form (the “Initial Term”). Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to two years (the “Renewal Term”), unless either party gives the other written notice of non-renewal at least 30 days before the end of the then-current subscription term. The per-unit pricing during any Renewal Term may increase above the applicable pricing in the prior period. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Flashtract’s applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Services has decreased from the prior term will result in Flashtract and Customer re-pricing the Services, in good faith, prior to the renewal without regard to the prior term’s per-unit pricing.

11.3. **Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach of this Agreement or the Documents incorporated herein if such breach remains uncured at the expiration of such period, (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, (iii) Customer 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 (iv) if Customer is acquired by, acquires a substantial interest in, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of Flashtract.

11.4. **Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with Section 11.3, Flashtract will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Flashtract in accordance with Section 11.3, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Flashtract for the period prior to the effective date of termination.

11.5. **Surviving Provisions.** The sections titled “Fees and Payment,” “Proprietary Rights and Licenses,” “Confidentiality,” “Disclaimers,” “Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Removal of Content and Non-Flashtract Applications,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, and the section titled “Protection of Customer Data” will survive any termination or expiration of this Agreement for so long as Flashtract retains possession of Customer Data.

12. GENERAL PROVISIONS

12.1. **Export Compliance.** The Services, Content, other Flashtract technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Flashtract and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any Authorized User to access or use any Service or Content in a U.S.-embargoed country or region (currently Iran, Cuba, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.

12.2. **Anti-Corruption.** Neither party has received or been offered any illegal or

improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

12.3. **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Flashtract and Customer regarding Customer's use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

12.4. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

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

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

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

12.8. **Assignment.** Customer shall not assign or otherwise transfer any of its rights or obligations hereunder, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Flashtract's prior written consent, which consent shall not be unreasonably withheld; provided, however, Customer and Flashtract may assign this Agreement in its entirety (including all Order Forms), to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without the other party's prior written consent. This Agreement (including all Order Forms) is freely assignable by Flashtract. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns and no assignment, delegation or transfer will relieve Customer of any of its obligations or performances under this Agreement.

12.9. **Notices.** Except as otherwise expressly set forth in this Agreement, any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to the following (or to such other address or such other person that Flashtract may designate from time to time):

Flashtract, Inc.
3343 Peachtree RD NE

Suite 145-364
Atlanta, GA 30326
Attn: Flashtract

12.10. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) hand delivery, with signed confirmation of receipt, (b) the second business day after mailing by certified or registered mail, return receipt requested, postage prepaid, or (c), except for notices of termination or an indemnifiable claim (collectively, "Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.

12.11. **Governing Law; Venue.** This Agreement is governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Georgia. Any legal suit, action, or proceeding arising out of or related to this Agreement will be instituted exclusively in the federal courts of the United States or the courts of the State of Georgia in each case located in the city of Atlanta and County of Fulton, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

12.12. **Amendment and Modification; Waiver.** Flashtract may change the terms of this Agreement from time to time effective upon notice to Customer. By continuing to use any of the Services after we make such changes and notify Customer of such changes, Customer accepts the Agreement, as modified.