

## TERMS AND CONDITIONS OF USE

Effective Date: \_\_\_\_\_, 2014

These Terms and Conditions of Use (these “**Terms and Conditions**”) contain the legally binding terms and conditions for use of the website located at [www.loudfund.com](http://www.loudfund.com), all other sites owned and operated by LoudFund.com, LLC (the “**Company**”) that redirect to [www.loudfund.com](http://www.loudfund.com) and all subdomains (collectively, the “**Site**”), and the service owned and operated by the Company (together with the Site, the “**Service**”). Use of the Service in any manner, including but not limited to, visiting or browsing the Site or contributing content, information, or other materials or services to the Site, constitutes an agreement to be bound by these Terms and Conditions. Use of the Site in any way constitutes an agreement to be bound by these Terms and Conditions.

### 1. **SUMMARY OF SERVICE**

The Site is a platform where certain recording artists (“**Artists**”) run crowdfunding campaigns (“**Campaigns**”) to fund music recording and production by offering rewards in exchange for monetary contributions from users and fans of Artist (“**Funders**”). Through the Site, email, websites, and other media, the Service makes accessible various content, including, but not limited to, audio clips, videos, photographs, images, comments, data, text, other material and information, and associated copyrightable works (collectively, “**Content**”). Artists, Funders, and other visitors to and users of the Service (collectively, “**Users**”) may have the ability to contribute, add, create, upload, submit, distribute, facilitate the distribution of, collect, post, or otherwise make accessible Content. “**User Submissions**” means any Content contributed, added, created, uploaded, submitted, distributed, facilitated the distribution of, collected, posted or otherwise made accessible by Users.

### 2. **ACCEPTANCE OF TERMS**

**Acceptance of Terms and Conditions.** The Service is provided subject to acceptance of all rights and obligations contained in these Terms and Conditions, and all other operating rules, policies, and procedures that may be published by the Company on the Site, which are incorporated herein by reference. These Terms and Conditions apply to each and every User. In addition, some services offered through the Service may be subject to additional terms and conditions. Use of those services is subject to such additional terms and conditions adopted by the Company, which are by this reference incorporated into these Terms and Conditions.

**Modification or Replacement of Terms and Conditions.** The Company reserves the right, in the Company’s sole discretion, to modify or replace these Terms and Conditions by posting updates to the Terms and Conditions on the Site. Posting of modifications or replacements of these Terms and Conditions to the Site constitutes notice of such modification or replacement to Users, and no further notification shall be required of the Company. Users are responsible for diligently checking the Site for modifications and/or replacements of these Terms and Conditions, and failure to check for changes to the Terms and Conditions in no way limits the applicability of the revised, updated, modified or replaced Terms and Conditions on the Site. Any use of the Service following the posting of any changes to the Terms and Conditions constitutes acceptance of those changes.

**Right to Change or Suspend Service.** The Company reserves the right to change, suspend or discontinue the Service (including, without limitation, the availability of any feature, database or Content)

at any time for any reason. The Company also reserves the right to impose limits on certain features and services or restrict access to part or all of the Service without notice.

**Eligibility Requirements.** The Service is available only to individuals who are at least eighteen (18) years old. Each User represents and warrants that (i) the User, if an individual, is at least eighteen (18) years old and of legal age in the User's jurisdiction to form a binding contract, and (ii) all registration information submitted by User is accurate and truthful. The Company reserves the right to ask for proof of age from any User and such User's account may be suspended until satisfactory proof of age is provided. The Company may, in the Company's sole discretion, refuse to offer the Service to any person or entity and change the Company's eligibility criteria at any time. This provision is void where prohibited by applicable law and the right to access the Service is revoked in those jurisdictions.

### **3. RULES AND CONDUCT**

#### **Prohibited Uses.**

(a) Users shall not use the Service for any purpose prohibited by these Terms and Conditions or applicable law. The Service is provided only for personal, non-commercial use (except as allowed by the terms set forth in these Terms and Conditions). Users are responsible for all of their activity in connection with the Service. Users shall not, and shall not allow any third party using such User's account to, take any action, or submit any Content, that:

- (i) infringes any patent, trademark, trade secret, copyright, right of publicity, or other right of any other person or entity, or violates any law or contract;
- (ii) is false, misleading or inaccurate;
- (iii) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, tortious, obscene, offensive, profane, or an invasion of privacy;
- (iv) constitutes unsolicited or unauthorized advertising or promotional material or any junk mail, spam, or chain letters;
- (v) contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit, or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password, or other information of the Company or any third party;
- (vi) is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence; or
- (vii) impersonates any person or entity, including, without limitation, any employee or representative of the Company.

(b) Additionally, Users shall not: (i) take any action that imposes or has potential to impose (as determined by the Company in the Company's sole discretion) an unreasonable or disproportionately large load on the Company's or the Company's third party providers' infrastructure; (ii) interfere or attempt to interfere with the proper working order of the Service or any activities conducted through the Service; (iii) bypass any measures to prevent or restrict access to the Service; (iv) run any form of auto-responder or spam on the Service; or (v) use manual or automated software, devices, or other processes to "crawl" any portion of the Site.

(c) Users shall not directly or indirectly: (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Service, except to the extent applicable laws specifically prohibit such restriction; (ii) modify, translate or otherwise create derivative works of any part of the Service; or (iii) copy, rent, lease, distribute or otherwise transfer any of the rights hereunder. Users shall abide by all applicable local, state, national and international laws and regulations.

Personal Information. Artists agree to not abuse User personal information. “*Abuse*” is defined as using personal information for any purpose other than those explicitly specified in the Artist’s Campaign, or is not related to fulfilling delivery of a product or service explicitly specified in the Artist’s production project.

#### **4. REGISTRATION**

Registration Requirement. Users may view Content on the Site without registering, but as a condition of using certain aspects of the Service, Users may be required to register with the Company and select a screen name (“*User Name*”) and password. Users shall provide accurate, complete and updated registration information. Failure to provide accurate, complete and updated registration information shall constitute a breach of the Terms and Conditions, which may result in immediate termination of the breaching User’s account. Users shall not use as a User Name, domain name, or any name or term that (i) is the name of another person, with the intent to impersonate that person; (ii) is subject to any rights of another person, without appropriate authorization; or (iii) is offensive, vulgar, or obscene. The Company reserves the right in the Company’s sole discretion to refuse registration of or cancel a User Name, domain name, or project name. Each User is solely responsible for activity that occurs on such User’s account and shall maintain the confidentiality of such User’s password for the Site. Users shall never use another User account without the other User’s express permission. Users shall immediately notify the Company in writing of any unauthorized use of an account, or other known account-related security breach.

#### **5. PRODUCTION PROJECTS; FUNDRAISING AND COMMERCE**

Contract Between Funders and Artists. The Site is a platform for Artists to run Campaigns to fund music production projects (“*Production Projects*”) by offering rewards to raise money from Funders. By creating a Campaign on the Site, each Artist is offering to the public an opportunity to contract with such Artist. By contributing to a Campaign on the Site, Funders accept that offer, thereby forming a contract between Artist and Funder. The Company is not a party to any agreement between Artist and Funder, and all dealings are between Artist and Funder only.

Additional Terms for Artists and Funders. By contributing to or creating a Campaign on the Site, Artists and Funders agree to be bound by all of these Terms and Conditions, including without limitation the following:

(a) Funders shall provide their payment information at the time they pledge to a Campaign. The payment will be collected at or after the Campaign deadline only if the amount of money pledged as of the deadline is equal to or greater than the fundraising goal. Funders shall be charged the amount that they pledged at the end of a successful fundraising campaign.

(b) Funders consent to the Company and the Company’s payment partners authorizing or reserving a charge on any Funder’s payment card or other payment method for any

amount up to the full amount pledged by such Funder at any time between the pledge and either (i) the Campaign end date, or (ii) collection of the pledged funds.

(c) Funders shall ensure the availability of sufficient funds or credit available at the Campaign end date in order to fulfill their pledges.

(d) Funders may increase, decrease, or cancel their pledge at any time during the Campaign; provided, that Funders may not cancel or reduce a pledge if (i) the Campaign is in its final twenty-four (24) hours, and (ii) the cancellation or reduction would drop the pledged funds below the campaign goal.

(e) Users understand and agree each Artist will make a good faith attempt to complete the Production Project associated such Artist's Campaign and to fulfill each reward by its projected reward date, but that there is no guaranty that the Production Project will be completed in accordance with its projected timeline or that it will ever be completed, and Funders risk never receiving any rewards or other returns in connection with any Production Project.

(f) For all Campaigns, the Company provides to Artist the User Name and pledge amount of each Funder who pledged to the Campaign. For successful Campaigns, the Company additionally provides Artist with each contributing Funder's name and email.

(g) For some rewards, Artists may need further information from Funders, such as a mailing address or t-shirt size, to enable the Artist to deliver the rewards. In such cases, the Artist shall request the information directly from Funders at some point after the completion of a successful Campaign. To receive the reward, Funders agree to provide the requested information to the Artist within a reasonable amount of time.

(h) The Company does not offer refunds. Artists are under no obligation to grant any Funder's request for a refund.

(i) Artists may cancel or refund any Funder's pledge at any time and for any reason, and if a pledge is cancelled or refunded, Artists are under no obligation to fulfill the reward associated with the cancelled or refunded pledge.

(j) The Company does not guarantee to Artists that all pledged funds will be collected and distributed to Artist, less any applicable fees.

(k) The Company shall remove applicable fees payable to the Company prior to transmitting Campaign proceeds to Artists. Fees may vary based on geographic region and various other factors.

(l) The Company may cancel any Funder's pledge at any time, for any reason.

(m) The Company reserves the right to reject, cancel, interrupt, remove or suspend a Campaign at any time and for any reason. The Company shall not be liable for any damages as a result such rejection, cancellation, interruption, removal or suspension of a campaign.

(n) Artists shall take no action in reliance on having a Campaign posted on the Site or using any pledged funds until such Campaign has successfully completed and the Artist has access to the pledged funds in accordance with an agreement between Artist and the Company or its affiliate. There may be a delay between the end of a successful Campaign and access to the funds.

Limitation of Liability. The Company shall not be liable for any damage or loss incurred related any reward or other use of the Service. The Company is under no obligation to become involved in disputes between Users, between any User and Artist, or between Users and any third party arising in connection with the use of the Service. This includes, but is not limited to, delivery of goods and services, and any other terms, conditions, warranties, or representations associated with Campaigns on the Site. The Company does not oversee the performance or punctuality of Production Projects. The Company does not endorse any User Submissions. Users release the Company, the Company's officers, employees, agents and assigns from claims, damages and demands of every kind, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and the Service.

## **6. COLLECTION OF FUNDS**

Collection. Funds pledged by Funders are collected by Loudfund Capital, LLC or other third party ("**Servicer**"). The Company is not responsible for the performance of Servicer and shall not be liable for any damage or loss incurred as a result of Servicer's activities.

## **7. THIRD PARTY SITES**

Use of Third Party Sites. The Service allows Users to link to other websites or resources on the internet, and other websites or resources may contain links to the Site. When Users access third-party websites, they do so at their own risk. The Company is not liable for the content, function, legality or any other aspect of third-party websites. The inclusion on another website of any link to the Site does not constitute an endorsement by or affiliation with the Company. The Company shall not be liable for any damage related to the use of any content, goods, or services available through any third-party website or resource.

## **8. CONTENT AND LICENSE**

Protected Content. The Service contains Content provided by the Company, the Company's partners, Artists and Users. Such Content may be protected by copyrights, trademarks, service marks, patents, trade secrets, or other rights and laws. Users shall abide by and maintain all copyright and other legal notices, information, and restrictions contained in any Content accessed through the Service.

Grant of License. The Company grants Users a worldwide, non-exclusive, non-sublicensable and non-transferable license to use and reproduce the Content, solely for personal, non-commercial use. Use, reproduction, modification, distribution or storage of any Content for any use other than personal, non-commercial use is prohibited without prior written consent from the Company or the copyright holder. Users shall not sell, license, rent or otherwise use or exploit any Content for commercial use or in any way that violates any right of a third party.

## **9. INTELLECTUAL PROPERTY**

Terms Related to Intellectual Property. By accessing the Site, Users agree to the following terms:

(a) The Company shall have no ownership rights over User Submissions; provided, that the Company shall be granted a license to perform and market the Service on behalf of Users and the Company. Users grant to the Company the worldwide, non-exclusive, perpetual, irrevocable, royalty-free, sublicensable, transferable right to (i) use, edit, modify, prepare derivative works of, reproduce, host, display, stream, transmit, playback, transcode, copy, feature, market, sell, distribute, and otherwise fully exploit User Submissions and trademarks, service marks, slogans, logos, and similar

proprietary rights (collectively, the “Trademarks”) in connection with (a) the Service, (b) the businesses of the Company and the Company’s successors and assigns, (c) promoting, marketing, and redistributing part or all of the Site (and derivative works thereof) or the Service in any media formats and through any media channels; (ii) take whatever other action is required to perform and market the Service; (iii) allow Users to stream, transmit, playback, download, display, feature, distribute, collect, and otherwise use the User Submissions and trademarks in connection with the Service; and (iv) use and publish, and permit others to use and publish, the User Submissions, Trademarks, names, likenesses, and personal and biographical materials of Users and the members of a User’s group, in connection with the provision or marketing of the Service. The foregoing license grant to the Company does not affect Users’ other ownership or license rights in User Submissions, including the right to grant additional licenses to User Submissions.

**(b)** Users publishing User Submission may be identified publicly either by name or by User Name with respect with to such User Submission.

**(c)** Users grant to all Users a non-exclusive license to access their User Submissions through the Service, and to use, edit, modify, reproduce, distribute, prepare derivative works of, display and perform such User Submissions solely for personal, non-commercial use.

**(d)** User Submissions shall be prohibited from containing third party copyrighted material or material that is subject to other third party proprietary rights, unless prior express written consent of the rightful owner of such protected material has been obtained or such User is otherwise legally entitled to post the material and to grant the Company all of the license rights granted herein.

**(e)** Users shall be liable for and shall pay all royalties and other amounts owed to any person or entity based on User Submissions to the Service or the Company’s publishing or hosting of the User Submissions as contemplated by these Terms and Conditions.

**(f)** Use or exploitation of User Submissions by the Company and Users as contemplated by these Terms and Conditions shall not infringe or violate the rights of any third party, including without limitation any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights.

**(g)** The Company hereby expressly reserves the right to delete, edit, modify, reformat, excerpt or translate any of User Submissions.

**(h)** All information posted or transmitted (publicly or privately) through the Site is the sole responsibility of the originator of such post or transmission.

**(i)** The Company shall not be liable for any errors or omissions in any Content.

**(j)** The Company does not guarantee the identity of any Users.

**(k)** All Content accessed by Users through the Service is at the sole risk of the Users, and Users are solely responsible for any damage or loss to any party resulting from User access to Content.

**Termination of Accounts.** In accordance with the Digital Millennium Copyright Act (the “**DMCA**”), the Company shall, in appropriate circumstances, terminate accounts of Users that are repeat infringers of the intellectual property rights of others. The Company also reserves the right to terminate User accounts based on a single infringement.

## 10. COPYRIGHT NOTIFICATIONS

Removal of Infringing Materials. The Company shall remove infringing materials in accordance with the DMCA if properly notified that Content infringes copyright. Any User that owns copyrighted material and believes that such copyrighted material is being used on the Site in such a way that constitutes constitute copyright infringement should notify the Company's copyright agent by submitting an email notification to [admin@loudfund.com](mailto:admin@loudfund.com). Emails reporting copyright infringement must include the following information (please confirm these requirements with legal counsel, or see the U.S. Copyright Act, 17 U.S.C. §512(c)(3), for more information):

- (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- (b) identification and description of the copyrighted work that allegedly has been infringed;
- (c) identification of the infringing material and the infringing material's location on the Site;
- (d) contact information (address, telephone number and email address) for the User reporting copyright infringement;
- (e) a statement by the reporting User that such User has a good faith belief that use of the Content on the Site is not authorized by the copyright owner, its agent, or the law; and
- (f) a statement by the reporting User that the information in the notice is accurate and, under penalty of perjury, that the reporting User is the copyright owner or is authorized to act on the copyright owner's behalf.

Under the Copyright Act, any person who knowingly materially misrepresents that material is infringing or was removed or disabled by mistake or misidentification may be subject to liability.

Failure to comply with these notice requirements may render such notification or counter-notification invalid.

## 11. TERMINATION

Termination of Access. The Company may terminate access to the Service at any time, without cause or notice, which may result in the forfeiture and destruction of all information associated with User accounts. Users wishing to terminate their accounts must follow the directions on the Site to terminate their accounts. All fees paid to the Company are non-refundable. All provisions of the Terms and Conditions that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## 12. WARRANTY DISCLAIMER

No Fiduciary Relationship. The Company owes no fiduciary duty to Users. Users acknowledge and agree that the Company has no obligation to take any action regarding any of the following: (i) which Users gain access to the Site; (ii) Content accessed by Users through the Site; (iii) the effects Content may have on Users; (iv) how Users may interpret or use Content; or (v) actions Users may take as a result of having been exposed to Content. The Company cannot and does not guarantee the authenticity of any data or information that Users provide about themselves or their campaigns or production projects. Users hereby release the Company from all liability related to Content and having acquired or

not acquired Content through the Site. The Site may contain, or direct to other websites containing, information that may be offensive or inappropriate. The Company makes no representations concerning any Content on the Site, and the Company is not liable for the accuracy, copyright compliance, legality or decency of material contained on the Site.

No Guarantee of Content Availability. The Company does not guarantee that any Content will be made available through the Service. The Company has no obligation to monitor the Service or Content. The Company expressly reserves the right to, at any time, for any reason, and without notice: (i) cancel, reject, interrupt, remove or suspend a campaign or project; (ii) remove, edit or modify any Content, including, but not limited to, any User Submission; and (iii) remove or block any User or User Submission.

Disclaimer of Warranties.

THE SERVICE IS PROVIDED “AS IS” AND “AS AVAILABLE” AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. THE COMPANY, AND THE COMPANY’S DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS AND CONTENT PROVIDERS DO NOT WARRANT THAT: (A) THE SERVICE WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (B) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (C) ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (D) THE RESULTS OF USING THE SERVICE WILL MEET REQUIREMENTS OF ANY USER. USE OF THE SERVICE IS SOLELY AT THE USERS’ OWN RISK. THESE LIMITATIONS MAY NOT APPLY IN STATES OR COUNTRIES THAT DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS.

No Guarantee of Privacy. The Company makes no guarantee of confidentiality or privacy of any communication or information transmitted on the Site or any website linked to the Site. The Company shall not be liable for the privacy of email addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on the Company’s equipment, transmitted over networks accessed by the Site or otherwise connected with use of the Service.

(a) Electronic Communications Privacy Act Notice (18 USC §2701-2711): THE COMPANY MAKES NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITE OR ANY WEBSITE LINKED TO THE SITE. The Company shall not be liable for the privacy of email addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on the Company’s equipment, transmitted over networks accessed by the Site, or otherwise connected with use of the Service.



### **13. INDEMNITY**

**Indemnification.** Users shall defend, indemnify and hold harmless the Company, the Company's affiliates and each of the Company's and the Company's affiliates' employees, contractors, directors, suppliers and representatives from all liabilities, claims and expenses, including reasonable attorneys' fees and other legal costs, arising from or relate to such User's use or misuse of, or access to, the Service and Content, or otherwise from User Submissions, violation of the Terms and Conditions, or infringement by such User, or any third party using such User's account, of any intellectual property or other right of any person or entity. The Company reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by such User, in which event such User shall assist and cooperate with the Company in asserting any available defenses.

### **14. LIMITATION OF LIABILITY**

**Limit of Damages.** In no event shall the Company, the Company's directors, members, employees, agents, partners, suppliers or content providers, be liable under contract, tort, strict liability, negligence or any other legal or equitable theory with respect to the service (i) for any lost profits, data loss, cost of procurement of substitute goods or services, or special, indirect, incidental, punitive or consequential damages of any kind whatsoever, substitute goods or services (however arising), (ii) for any bugs, viruses, trojan horses or the like (regardless of the source of origination), or (iii) for any direct damages in excess of (in the aggregate) one hundred U.S. dollars (\$100.00). Some jurisdictions prohibit the exclusion or limitation of incidental or consequential damages, so this provision is void in the jurisdictions where it is not allowed.

### **15. INTERNATIONAL ACCESS**

**Illegality of Content.** Accessing the Service is prohibited from territories where the Content is illegal. Users accessing the Service from jurisdictions where the Content is illegal do so at their own risk and shall be solely responsible for compliance with applicable laws.

### **16. ELECTRONIC DELIVERY, NOTICE POLICY, AND CONSENT**

By using the Services, Users consent to receive from the Company all communications including notices, agreements, legally required disclosures, or other information in connection with the Services (collectively, "***Legal Notices***") electronically. The Company may provide the electronic Legal Notices by posting them on the Site. Users who wish to withdraw from receiving Legal Notices electronically must discontinue their use of the Services.

### **17. GOVERNING LAW**

**Choice of Law.** These Terms and Conditions (and all additional rules, policies, or guidelines incorporated by reference) shall be governed by and construed in accordance with the laws of the State of Georgia and the United States, without giving effect to any principles of conflicts of law, and without application of the Uniform Computer Information Transaction Act or the United Nations Convention of Controls for International Sale of Goods. The Site and the Service are deemed a passive website that does not give rise to personal jurisdiction over the Company or the Company's parents, subsidiaries, affiliates, successors, assigns, employees, agents, directors, members, officers or shareholders, either specific or general, in any jurisdiction other than the State of Georgia. Any action at law or in equity arising out of or relating to these Terms and Conditions, or use or non-use of the Service, shall be filed only in the state or federal courts located in Gwinnett County in the State of Georgia and Users hereby

consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. Users hereby irrevocably waive any right to trial by jury in any dispute, action or proceeding.

#### **18. INTEGRATION AND SEVERABILITY**

Entire Agreement. These Terms and Conditions and the material referenced herein constitute the entire agreement with respect to the Service, and hereby supersede all prior or contemporaneous communications and/or proposals, whether written, oral or electronic, between Users and the Company concerning the Service. In the event any provision of these Terms and Conditions becomes unenforceable, illegal or invalid, that provision shall be treated as if it is not part of these Terms and Conditions and all other provisions shall remain in full force and effect. Failure of either party to exercise a right provided for in these Terms and Conditions shall not constitute a waiver of any further rights afforded hereunder.

#### **19. MISCELLANEOUS**

The Company shall not be liable for any failure to perform the Company's obligations hereunder where the failure results from a cause beyond the Company's reasonable control, including, without limitation, mechanical, electronic, or communications failure or degradation. The Terms and Conditions are personal, and are not assignable, transferable or sublicensable, except with the Company's prior express written consent. The Company may assign, transfer, or delegate any of its rights and obligations hereunder without consent. No agency, partnership, joint venture, or employment relationship is created as a result of the Terms and Conditions and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under the Terms and Conditions, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under the Terms and Conditions shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.