



## ROLCLICK ENTERPRISE TERMS AND CONDITIONS

These terms and conditions (“**Terms**”) govern your acquisition and use of our services and products. By executing an order form (“**Order Form**”) that references these Terms, you agree to the Terms set forth below.

### **1. Definitions**

“**Affiliate**” means any entity that directly or indirectly (through one or more intermediaries) Controls, is Controlled by, or is under common Control with Rollick or Client.

“**Agreement**” means these Terms, any and all Order Forms and any documents that are incorporated by reference herein.

“**Analytics Data**” means data, other than Client Data that is generated in connection with Client’s use of any Rollick Product, including log, performance, usage, referral, search term, pixel, session, cookie, flash local storage object, beacon, and other web analytics data.

“**Client Data**” means, in each case as applicable to a Rollick Product, (a) any data, content or information stored in a Client instance of a Rollick Product, and (b) any Client data that a Rollick Product may receive directly from Client, Client’s systems, or any applicable Third Party ’s systems, which in each case may include Consumer Information. Client Data expressly excludes Analytics Data.

“**Client Intellectual Property**” means any Intellectual Property owned by Client on the Effective Date, and any modifications, derivative works and improvements thereof made, created or developed by or on behalf of Client.

“**Client Resources**” means Client-utilized systems, content or materials (including those licensed from Third Parties, or purchased or developed by Client) that may be, as applicable, integrated with a Rollick Product or transmitted, uploaded or otherwise submitted to a Rollick Product.

“**Confidential Information**” means all information or materials provided or otherwise disclosed by or on behalf of Disclosing Party to the Receiving Party, whether orally or in writing, that are designated as confidential or that reasonably should be understood to be confidential, given the nature of the information disclosed and the circumstances of disclosure. In each case, as applicable, (a) Rollick’s Confidential Information includes the Rollick Products and all information and materials that in any way relate to any Rollick Product (including this Agreement, and any pricing information relating to the Rollick Products) or any other aspect of the business or operations of Rollick or its Affiliates, including any information or materials relating to the operations, customers, contractors, distributors, software, technology, products, services or marketing plans of Rollick or its Affiliates; and (b) Client’s Confidential Information includes Client Data. Notwithstanding the foregoing, Confidential Information does not include information that: (1) is or becomes generally available to the public other than as a result of a wrongful disclosure by the Receiving Party; (2) was rightfully in the possession of, or was rightfully known by the Receiving Party without an obligation to maintain its confidentiality prior to receipt from the Disclosing Party; (3) becomes available to the Receiving Party on a non-confidential basis from a source which is not, to the Receiving Party’s knowledge, prohibited from disclosing such information; (4) is developed independently by the Receiving Party; or (5) was generally made available to Third Parties by the Disclosing Party without restrictions similar to those imposed under these Terms.

“**Consumer Information**” means any information that is defined as “personal information,” or any other substantially similar designation, under any applicable Privacy Laws.

“**Control**” means ownership or control, directly or indirectly, of more than fifty percent (50%) of the voting interests of the subject entity or the legal power to direct or cause the direction of the general management of such entity, whether by contract or otherwise.

“**Deliverables**” means the Services and any products, solutions and other deliverables that Rollick provides to Client under this Agreement as described in an applicable Order Form.

“**Disclosing Party**” means the Party that provides Confidential Information to the Receiving Party (or on behalf of which Confidential Information is provided) in connection with an Order Form.

“**Documentation**” means the system, process, procedural, and user documentation for the Deliverables provided by Rollick, as amended or supplemented by Rollick, in its sole discretion, from time to time.

“**Effective Date**” is the date that the applicable Order Form is signed.

“**Feedback**” means any information, suggestions, ideas, enhancement requests, recommendations, comments and other feedback that Client may disclose, transmit, suggest or offer to Rollick with respect to any Rollick Product.

“**Fees**” means, with respect to each Order Form, the fees applicable to such Order Form, as may be modified from time to time in accordance with this Agreement.

“**Force Majeure Event**” means any circumstance or cause beyond a Party’s reasonable control and not caused by such Party, its agents or employees, including, without limitation, acts of God, strikes, lockouts, riots, insurrections, civil



disturbances, sabotage, embargoes, blockades, acts of war, acts or failures to act of any governmental or regulatory body (whether civil or military, domestic or foreign), fires, explosions, floods, accidents, epidemics, earthquakes or other natural or man-made disasters, and all occurrences similar to the foregoing.

**“Intellectual Property”** or **“Intellectual Property Rights”** means any or all of the following and all rights in, arising out of or associated therewith: (i) all inventions (whether or not patentable), improvements thereto and United States, international and foreign patents and applications therefor and all reissues, divisions, divisionals, renewals, extensions, provisionals, continuations and continuations-in-part thereof, and all patents, applications, documents and filings claiming priority to or serving as a basis for priority thereof, (ii) works of authorship, copyrights (including computer software programs), copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world, (iii) trade secrets and all proprietary information, including non-public know how, technology, business methods, technical data and customer lists, and all documentation relating to any of the foregoing, (iv) all trade names, logos, common trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world, (v) all industrial designs and any registrations and applications therefor throughout the world, (vi) all databases and data collections and all rights therein throughout the world, (vii) all moral rights of authors and inventors, however denominated, throughout the world, (viii) all web sites and domain names, and any similar or equivalent rights to any of the foregoing anywhere in the world.

**“Laws”** means all applicable federal, state and local laws, regulations, rules, ordinances and other decrees of any governmental authority.

**“Mobile Application”** means a mobile or tablet website or application.

**“Modifications”** means changes, upgrades, updates, modifications or enhancements to, or derivative works of, a Rollick Product.

**“Party”** means Client or Rollick, individually, as applicable; and **“Parties”** means Client and Rollick, collectively.

**“Personnel”** means agents, employees, officers, directors or contractors employed, engaged or appointed by a Party hereunder.

**“Privacy Laws”** means all applicable privacy laws and information security laws, and any other applicable federal, state, provincial or local laws, as they exist and are amended from time to time, relating to: (a) data privacy, security, integrity, confidentiality, communications, use, collection, processing and storage; and (b) spamming and other unsolicited communications, including, but not limited to, as applicable, the U.S. Gramm-Leach-Bliley Act of 1999 (e.g., 16 C.F.R. Part 313 (Privacy Rule) and 16 C.F.R. Part 314 (Safeguards Rule)), the U.S. Telephone Consumer Protection Act of 1991 (TCPA), the Federal CAN-SPAM Act of 2003, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telemarketing Sales Rule, the California Consumer Privacy Act of 2018, and any regulations, rules, or orders promulgated by the Federal Communications Commission and the Federal Trade Commission.

**“Professional Services”** means consulting, training, development, technical support, maintenance, and such other services as set forth in an applicable Order Form.

**“Receiving Party”** means the Party that receives Confidential Information from the Disclosing Party in connection with an Order Form.

**“Rollick Intellectual Property”** means (a) any Intellectual Property owned by Rollick as of the Effective Date, including, without limitation, the Deliverables, Documentation, Rollick System, Rollick Website, Rollick Tools and any and all upgrades, enhancements, modifications, derivative works and improvements of any of the foregoing (whether made or developed before or after the Effective Date); (ii) any Intellectual Property created, generated or developed by Rollick after the Effective Date independent of this Agreement or any Statement of Work; and (iii) all Work Product, excluding any Client Confidential Information and any Intellectual Property that is specifically identified as Client Intellectual Property within a Statement of Work.

**“Rollick Product”** means a Rollick software product, service or solution identified on the applicable Order Form. The Order Form may cover more than one Rollick Product.

**“Rollick System”** means Rollick’s software (whether internally developed, licensed or owned by Rollick or an Affiliate) which supports or provides the Services and/or contain applications that are a part of the Deliverables, and the Rollick computers which maintain such software and all operating or system software installed on such Rollick computers.

**“Rollick Tools”** means all data, information, look and feel, user interface, software code, programs, technologies, methodologies, business processes, techniques, formulas and algorithms and other tools used by Rollick in connection with the Deliverables or displayed or provided on the Rollick Websites.

**“Rollick Website”** means each website on the World Wide Web that is owned, operated and/or controlled by Rollick or any Rollick Affiliate through which Rollick (or a Rollick Affiliate) provides the Deliverables.



“**Services**” means the services provided by Rollick to Client under this Agreement as described in an applicable Order Form.

“**Third Party**” means a party other than Client, Rollick and their respective Affiliates.

“**Trademarks**” means a Party’s name, trademark, service mark, brand name or logo, whether registered or unregistered.

“**Work Product**” means all Intellectual Property conceived, created, developed, and/or reduced to practice by Rollick after the Effective Date pursuant to this Agreement or Statement of Work, including all upgrades, modifications, enhancements, derivative works or improvements thereof.

## **2. Services and Other Deliverables; Agreement Structure**

**2.1 *Scope of Services and Other Deliverables Provided by Rollick.*** During the Term, Client and Rollick may agree that Rollick or its Affiliates will provide Rollick Products and/or other certain deliverables to Client. Each such agreement will be documented in an Order Form. The terms and conditions of this Agreement (including the order of precedence in Section 2.2) will govern each Order Form.

**2.2 *Order of Precedence; Purchase Orders.*** In the event of an inconsistency between the provisions in this Agreement and the provisions in an Order Form, the provisions in the Order Form will prevail. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order or confirmation document (other than an Order Form) will be incorporated into this Agreement or any Order Form, and all such terms will be void.

**2.3 *Subcontractors.*** Rollick may engage subcontractors or service providers to perform any or all of the Services or to provide any Deliverables. The engagement of subcontractors or service providers by Rollick will not relieve Rollick of any of its obligations under this Agreement.

**2.4 *No Resell.*** Unless otherwise explicitly set forth in an applicable Order Form, neither Client nor any of its Affiliates may (a) remarket or sell all or any Deliverables (or portions thereof) provided under this Agreement, or (b) make all or any portion of the Deliverables available to any Third Party, in either case, without Rollick’s prior written consent.

**2.5 *Integration with Client Resources.*** To the extent integration with Client Resources is applicable to a Rollick Product, (a) Client grants Rollick and its service providers permission to access such Client Resources for the purpose of providing such integration; and (b) Client consents to the installation of hardware connectors, software connectors and/or other custom programs on Client’s local area network and/or computer workstations, and the enablement and use of passwords to access the Client Resources by Rollick and its designees.

**2.6 *Mobile Applications.*** Certain Rollick Products may, from time to time, be made available through a Mobile Application, which allows Client to use and access the applicable Rollick Product (or certain features or functionality thereof) via a mobile or tablet device. To use any Mobile Application, Client must have a mobile or tablet device that is compatible with such Mobile Application. For clarity, such access and use of Rollick Products (or any portions thereof) through a Mobile Application will be subject to these Terms. Client acknowledges that Rollick may from time to time issue upgraded versions of any Mobile Application, and in certain cases, Rollick may automatically and remotely upgrade the version of such Mobile Application that Client is using on its mobile devices. Client consents (on behalf of itself and its users) to any such automatic and remote upgrading on the mobile devices of Client and its users.

## **3. Fees; Invoices, Taxes.**

**3.1 *Fees.*** The Fees will be set forth in each Order Form. After the Initial Term of each Order Form, the Fees associated with such Order Form are subject to change, at Rollick’s sole discretion, but no more than once in any 12-month period, upon Rollick’s provision of at least 60 days prior written notice to Client; provided, however, Client will have the right to terminate the applicable Order Form with respect to any Deliverables for which Rollick proposes to increase fees by providing written notice to Rollick within 60 days of receipt of the notice of increase from Rollick

**3.2 *Invoices.*** Unless otherwise specified in an applicable Order Form, Rollick will invoice Client monthly for all Fees payable by Client to Rollick and payment of each invoice will be due within 30 days of the date of such invoice. If Client fails to pay any undisputed amount due by the due date, late charges of the lesser of 1 ½% per month or the maximum amount permissible by applicable law will also become due and payable. Client will also be liable for all collection agency fees and reasonable attorneys’ fees payable by Rollick in connection with enforcing Client’s payment obligations.

**3.3 *Taxes.*** Client will pay Rollick for all sales, use or excise taxes levied on amounts payable by Client to Rollick pursuant to this Agreement, whether such taxes are now or hereafter imposed. Rollick is responsible for remittance of such taxes to applicable tax authorities. Client will not be responsible for any local, state, federal or foreign ad valorem, income, franchise, privilege, value added or occupational taxes of Rollick, its Affiliates or subcontractors. Rollick will not be responsible for remittance for sales, use or excise taxes for which Client has provided Rollick a tax exemption certificate or other evidence supporting applicable exemptions.

#### **4. Confidential Information**

**4.1 *Confidentiality Obligations.*** The Receiving Party agrees not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of the services set forth in the applicable Order Form, and (except as otherwise authorized by the Disclosing Party in writing) disclose Confidential Information of the Disclosing Party only to its Personnel who need to know such information for purposes of fulfilling such Party's obligations or exercising such Party's rights relating to the services set forth in the applicable Order Form. The Receiving Party will keep the Confidential Information of the Disclosing Party confidential and secure, and protect it from unauthorized use or disclosure, by using at least the same degree of care as the Receiving Party employs to protect its own Confidential Information, but in no event less than reasonable care.

**4.2 *Compelled Disclosure.*** If the Receiving Party becomes legally compelled to disclose any Confidential Information of the Disclosing Party in a manner not otherwise permitted by these Terms, the Receiving Party will inform the Disclosing Party of the request with a prompt notice so that the Disclosing Party may seek a protective order or other appropriate remedy. If a protective order or similar order is not obtained by the date by which the Receiving Party must comply with the request, the Receiving Party may furnish that portion of the Confidential Information that it reasonably determines it is legally required to furnish. The Receiving Party will exercise reasonable efforts to obtain assurances that confidential treatment will be afforded to the Confidential Information so disclosed. This Section 4.2 will survive any termination of these Terms.

**4.3 *Return of Confidential Information.*** Upon termination or expiration of this Agreement, or upon the Disclosing Party's earlier request, the Receiving Party will promptly destroy all of the Disclosing Party's Confidential Information, any copies or partial copies thereof and material containing the Disclosing Party's Confidential Information (except for the Disclosing Party's Confidential Information that is transmitted by or through the Services) and certify to the Disclosing Party in writing that it has done so; provided, however, that the Receiving Party will not be required to return or destroy Confidential Information which has been provided to any governmental authority having jurisdiction over the Receiving Party. Additionally, the Receiving Party's legal department may retain one copy of the Confidential Information and any such other material for archival purposes, subject to the terms and conditions of this Agreement. The obligations under this Agreement, however, will survive such occurrence.

**4.4 *Injunctive Relief.*** Each of the Parties acknowledges that any use or disclosure of Confidential Information in violation of this Agreement will cause irreparable injury to the Disclosing Party for which other remedies at law would be inadequate, and each of the Parties agrees that a Disclosing Party will have the right to seek and obtain injunctive or other equitable relief as may be necessary or appropriate to prevent any use or disclosure of the Confidential Information in violation of this Agreement, and may also exercise such other rights and remedies as the Disclosing Party may have at law or in equity.

**4.5 *Restrictions on Use of Information and Data.*** Each party represents, warrants, and covenants that it has implemented adequate administrative, procedural, technical, and physical safeguards designed to (i) provide for the security and confidentiality of non-public personal information provided, collected, and/or received in connection with the Agreement ("NPI"), (ii) protect against any anticipated threats or hazards to the security or integrity of NPI, and (iii) protect against unauthorized access to or use of NPI which could result in substantial harm to a consumer. In addition, each party will notify consumers of security breaches as required by applicable law.

#### **5. Proprietary Rights**

**5.1 *Client Intellectual Property.*** As between Rollick and Client, Client will be and remain the sole and exclusive owner of the Client Intellectual Property. Rollick acknowledges that, as between Client and Rollick, Client will have and retain all right, title, and interest in and to the Client Intellectual Property and all Intellectual Property Rights therein, except for any content licensed from Third Parties. Nothing in this Agreement affects any rights that Rollick may have to Third Party Intellectual Property independent of this Agreement even if the same Third Party Intellectual Property is included in the Client Intellectual Property.

##### **5.2 *Rollick Intellectual Property.***

(a) As between Rollick and Client, Rollick will be and remain the sole and exclusive owner of all Rollick Intellectual Property. Except as may be expressly provided in an applicable Statement of Work, Client's authorized use of or access to the Rollick System or Deliverables will not confer on Client any ownership rights in any of the Rollick Intellectual Property. From time to time during the Term, Client and its Affiliates may have feedback, suggestions or comments that Rollick may, in its sole discretion, decide to incorporate, in whole or in part, into the Rollick Intellectual Property ("**Enhancements**"). Client acknowledges and understands that, unless otherwise specified in an applicable Statement of Work, Rollick and its licensors will own exclusively and in perpetuity any and all rights, title and interest in and to the Rollick Intellectual Property including, without limitation, any such Enhancements.



(b) Client agrees (and Client agrees to cause its Affiliates, and each of their respective employees to agree), upon Rollick's request and at Rollick's expense, to assign to Rollick in writing any proprietary interest that may be conferred upon Client or its Affiliates by law in any Rollick Intellectual Property including, without limitation, any Enhancements (subject to the exceptions in the immediately preceding paragraph), and any modifications, derivative works and improvements to the Rollick Intellectual Property.

(c) Client acknowledges that Rollick and its licensors (as applicable) will have and retain all right, title, and interest in and to the Rollick Intellectual Property and all Intellectual Property Rights therein. Except as expressly provided in this Agreement, Client will not (a) sell, lease, sublicense, or otherwise allow any Third Party to, directly or indirectly, use, view, or have access to the Rollick Intellectual Property (or any part thereof or rights therein), or (b) copy or otherwise reproduce any portion thereof or modify, enhance, or otherwise create any derivative works in relation thereto, or alter, decompile, engage in reverse assembly, or otherwise attempt to secure the source code for all or any part of the Rollick Intellectual Property. The foregoing will not affect any rights that Client may have to Third Party Intellectual Property independent of this Agreement even if the same Third Party Intellectual Property is included in the Rollick Intellectual Property.

**5.3 Trademarks.** Subject to the provisions of this Agreement, Client hereby grants to Rollick a limited non-exclusive, non-assignable, non-sublicensable, royalty-free license to use the Trademarks of Client and any Affiliates receiving Services and/or other Deliverables: (a) to the extent necessary to provide such Services and/or other Deliverables, (b) to identify that Client is a customer of Rollick, (c) in PowerPoint presentations, in-person conferences and conventions, or similar use, and (d) on the Rollick website, and Rollick Dealer websites, and in marketing communications delivered to consumers. Rollick will not use the Trademarks of Client and its Affiliates for any other reason without the prior written consent of Client.

**5.4 Infringement Claims of Third Parties.** Notwithstanding anything to the contrary in this Agreement or any Order Form, if the Rollick System or the Deliverables (or any portion thereof) are, or in Rollick's sole discretion are likely to become, subject to a claim of infringement, Rollick, at its option and expense, will either (a) procure for Client a license or a right to continue receiving the Deliverables; or (b) modify the Rollick System and/or the Deliverables to make it/them non-infringing in a manner that does not materially impair its/their functionality. If neither of the foregoing two options is reasonably available to Rollick, then either Party may terminate the affected Order Form by notice to other Party. Except for the indemnity obligations set forth in Section 8.2, the foregoing will be Client's sole and exclusive remedy and Rollick's sole and exclusive obligation with respect to any infringement claims relating to the Rollick System or the Deliverables. Rollick will have no obligation with respect to any actual or threatened infringement claim based in whole or in part upon Client's failure to use the Deliverables in accordance with this Agreement.

**5.5 Client Data.**

(a) Rollick respects and supports Client's right to protect Client Data. As between Rollick and Client, Client owns all rights, title and interest in the Client Data. Client grants Rollick, its Affiliates and their respective service providers hereunder the right to access, store, process and use Client Data in connection with Client's use of a Rollick Product and otherwise for the benefit of Client. As applicable to a Rollick Product, Client may request that Rollick transmit Client Data to a Third Party, and, upon such request, Rollick will hereby be permitted to do so. Client hereby authorizes and directs Rollick and/or its Affiliates to syndicate Client's inventory data to [www.gorollick.com](http://www.gorollick.com) and Client authorizes Rollick to use Client Data to create listing advertisements on behalf of Client.

(b) Client also grants Rollick, its Affiliates and service providers the right to use, and disclose in an aggregated manner (i.e., with data from other of Rollick's customers), during and after the term, Client Data, for Rollick's business purposes (including operating, maintaining and improving Rollick Products); provided that disclosures will not be made in a manner that identifies, or could be used to identify, Client or otherwise associates Client with such data.

**5.6 Analytics Data.** Client acknowledges and agrees that, as between the Parties, Rollick owns and has the right to freely use and disclose Analytics Data for its business purposes, provided that Analytics Data may not be disclosed in a manner that identifies, or could be used to identify, Client, or otherwise associates Client with such data.

**6. Representations & Limited Warranties**

**6.1 By Rollick.** Rollick represents and warrants to Client that:

(a) Rollick will comply at all times with all applicable Laws in connection with its making available any Rollick Product, including applicable Privacy Laws;

(b) Rollick is the owner and/or the licensee of all Intellectual Property Rights in and to all Rollick Products, and has all necessary rights and licenses to fulfill its obligations and grant all rights granted to Client herein; and

(c) the Services will be performed in a diligent and workmanlike manner by individuals of suitable training and skill.

**6.2 By Client.** Client represents and warrants that:



(a) Client will comply at all times with all applicable Laws in connection with the use of and access to a Rollick Product, including all applicable Privacy Laws and Laws relating to unfair competition, deceptive trade practices, advertising, and consumer protection (and upon the request of Rollick it will provide Rollick with evidence of any required consumer consents);

(b) With respect to Client Data, Client has and will maintain all rights and licenses necessary to provide and make available to Rollick for purposes of the applicable Order Form, and use in connection with a Rollick Product, and for Rollick for purposes of this Agreement, including to access, store and use Client Data in accordance with the terms herein; such use will not infringe or violate any rights of any Third Party;

(c) To the extent that Rollick, in connection with providing the Deliverables or any services, will be contacting a consumer, whether via, phone, email, SMS or otherwise, Client (or its dealer) has obtained from such consumer all consents and authorization required by Privacy Laws and any other applicable law for such contact by Rollick;

(d) For any integrations between a Rollick Product and Client-utilized systems, Client has all rights and licenses necessary to grant Rollick access to such systems and the applicable data stored thereon, and any access, polling, copying, extraction and downloading of, modifying and exporting such data by Rollick in accordance with the applicable Order Form does not and will not infringe or violate any rights of any Third Party; and

(e) Client's entering into the applicable Order Form does not conflict with or violate any other agreement Client may have with any Third Party.

**6.3 Disclaimer of Warranties. THE REPRESENTATIONS AND WARRANTIES BY EACH OF THE PARTIES THAT ARE SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF, AND EACH PARTY HEREBY DISCLAIMS TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, Rollick SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY (A) THAT THE DELIVERABLES WILL BE PERFORMED WITHOUT INTERRUPTION OR BE ERROR-FREE, (B) THAT THE DELIVERABLES MEET CLIENT'S REQUIREMENTS, OR (C) THAT ANY OR ALL OF THE DATA PROVIDED THROUGH THE SERVICES IS ACCURATE, UP-TO-DATE OR COMPLETE. ALL DATA AND INFORMATION PROVIDED IS PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, WITHOUT EXPRESS OR IMPLIED WARRANTIES OF ANY KIND.**

## **7. Limitation of Liability.**

**7.1** EXCEPT FOR THE PARTIES' INDEMNITY OBLIGATIONS, A BREACH OF THE CONFIDENTIALITY OBLIGATIONS, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR COVER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**7.2** EXCEPT FOR THE INDEMNITY OBLIGATIONS, A BREACH OF THE CONFIDENTIALITY OBLIGATIONS, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL ROLCLICK'S AGGREGATE LIABILITY FOR DAMAGES IN ANY AND ALL ACTIONS, HOWEVER BASED, ARISING OUT OF OR IN CONNECTION WITH ANY ORDER FORM EXCEED THE FEES AND CHARGES DUE TO ROLCLICK (OR IN THE CASE OF AN ORDER FORM UNDER WHICH ROLCLICK PAYS FEES TO CLIENT, THE FEES AND CHARGES PAID BY ROLCLICK) IN THE 12 MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE UNDER SUCH ORDER FORM. IN THE EVENT SUCH ACTION ARISES AT ANY TIME BEFORE THE COMPLETION OF THE INITIAL 12 MONTHS OF THE ORDER FORM TERM, THE FEES AND CHARGES DUE TO ROLCLICK AT SUCH TIME WILL BE ANNUALIZED FOR PURPOSES OF CALCULATING THE MAXIMUM LIABILITY OWED FOR ANY DAMAGES THEREUNDER.

## **8. Indemnification**

**8.1 Mutual Indemnifications.** Each Party hereby agrees to indemnify, defend and hold harmless the other Party, and its Affiliates, directors, officers, employees and agents, from and against any and all claims, demands, actions, suits, losses, liabilities, damages, injuries, fines, penalties, costs and expenses including, without limitation, reasonable attorneys' fees and court costs (including expert fees), asserted by a Third Party (each, a "Proceeding"), arising, directly or indirectly, from or in connection with: (a) a material breach or alleged material breach of any representation, warranty, covenant or other obligation set forth in this Agreement by such Party, its Affiliates, or any of their respective officers,

directors, employees or agents; or (b) gross negligence, or willful or wanton behavior of such Party, its Affiliates, or any of their respective officers, directors, employees or agents.

**8.2 Intellectual Property Indemnification.** In addition, Rollick agrees to indemnify, defend and hold harmless Client and its Affiliates, directors, officers, employees and agents, from and against any and all Proceedings arising, directly or indirectly, from or relating to the alleged infringement of the Rollick System or the Deliverables upon any Intellectual Property Right of any Third Party, except to the extent such alleged infringement is caused by (a) a modification, enhancement, or misuse by Client of any Deliverable or any Rollick System that is not furnished or authorized by Rollick, (b) failure by Client to use new or corrected versions of any Rollick Intellectual Property or other resources or items provided by Rollick to the extent that such use would have avoided the infringement or misappropriation or (c) the combination, operation, or use by Client of products or information not furnished or authorized by Rollick (each an “**Excluded Claim**”). Client agrees to indemnify, defend and hold harmless Rollick and its Affiliates, directors, officers, employees and agents, from and against any and all Proceedings arising, directly or indirectly, from or relating to any Excluded Claim.

**8.3 Indemnification Procedures.**

(a) Promptly after receipt by a Party (the “Indemnified Party”) of notice of the commencement of any Proceeding against it with respect to which the other Party is obligated to provide indemnification pursuant to this Agreement (the “Indemnifying Party”), the Indemnified Party will give notice to the Indemnifying Party of the commencement of such Proceeding, but the delay or failure to notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to the Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such action is prejudiced by the Indemnified Party’s delay or failure to give such notice.

(b) If any Proceeding is brought against an Indemnified Party and it gives notice to the Indemnifying Party of the commencement of such Proceeding, the Indemnifying Party will be entitled to participate in such Proceeding and, to the extent that it wishes (unless the Indemnifying Party is also a party to such Proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate) to assume the defense of such Proceeding with counsel reasonably satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such Proceeding, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under this Section 11 for any fees of other counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of such Proceeding. If the Indemnifying Party assumes the defense of a Proceeding no compromise or settlement of such Proceedings may be effected by the Indemnifying Party without the Indemnified Party’s consent, which will not be unreasonably withheld unless, (a) there is no finding or admission of any violation of law or any violation of the rights of any person and no effect on any other claims that may be made against the Indemnified Party and (b) the Indemnified Party will have no liability with respect to any compromise or settlement of such claims effected without its consent.

(c) Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle such Proceeding, but the Indemnifying Party will not be bound by a determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

**9. Term and Termination**

**9.1 Term.** The initial term for an Order Form shall be set forth therein (“Initial Term”). Thereafter, unless otherwise set forth in the Order Form, the Initial Term shall automatically renew for additional two (2) year terms (each, a “Renewal Term” and together with the Initial Term, the “Term”), unless a Party provides written notice of its intent not to renew at least 90 days prior to the end of the then current Term. To account for inflation, price increases from third-party services, and ongoing product enhancements, effective on the first date of the first Renewal Term and on each one (1) year anniversary of such date, the greater of (a) 6% or (b) the Consumer Price Index (CPI) for the 12 months prior to the calendar month during which next Renewal Term begins. Notwithstanding the above, this Agreement will continue to be in effect until each Order Form entered into under this Agreement is completed or otherwise terminated pursuant to the terms of this Agreement. Rollick may immediately terminate an Order Form with respect to any Rollick Product (or any component thereof) if it ceases to offer such Rollick Product (or any component thereof) to customers generally for any reason. In such event, the Order Form will continue to apply with respect to the remaining Rollick Products, if any.

**9.2 Termination for Cause.** In the event that a Party breaches any material provision of this Agreement and fails to fully cure such breach within 30 days of written notice describing the breach, the other Party may immediately,



upon providing written notice thereof, terminate this Agreement or the Order Form affected by such breach. This Agreement or any one or more Order Forms may be terminated by a Party for cause immediately by written notice upon the occurrence of any of the following events: (a) if the other ceases to do business, or otherwise terminates its business operations; or (b) if the other becomes insolvent, or seeks protection under any bankruptcy, receivership, trustee, creditor's arrangement composition or comparable proceeding, or if any such proceeding is instituted against the other and not dismissed within 30 days.

**9.3 Termination for Noncompliance with Regulatory Changes.** Either Party may terminate the relevant Services under any Order Form without liability therefor, immediately by written notice to the other Party in the event that a change in applicable law requires a material change in the Services or the manner in which the Services are then provided, and Rollick cannot make such change (a) without incurring material costs that it is not willing to incur; or (b) within the time period as may be directed by applicable law or regulatory guidance or, in the absence of such legal or regulatory prescribed time period, within a reasonable period of time as agreed between the parties.

**9.4 Effect of Cancellation.** Upon any cancellation of a Rollick Product (including through a termination of the applicable Order Form): (a) all rights granted to Client hereunder, and all obligations of Rollick related to such Rollick Product and/or Order Form, will immediately and automatically terminate; and (b) Any unpaid Fees due through the end of the then current term for such Rollick Product and/or Order Form will be immediately due and payable.

**10. Force Majeure.** If a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered, or delayed by a Force Majeure Event, then the non-performing, hindered, or delayed Party will be excused for such non-performance, hindrance, or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues. A Party prevented, hindered, or delayed in its performance hereunder as a result of a Force Majeure Event will immediately notify the other Party thereof by expeditious means (if telephonic, to be followed by a writing), describing in reasonable detail the circumstances causing such delay. If the Party so prevented, hindered, or delayed is Rollick, then Rollick will as soon as practicable, implement the applicable disaster recovery plan (as defined below) and resume the regular performance of its obligations as promptly as reasonably practicable after the Force Majeure Event has ceased to exist.

## **11. General**

**11.1 Independent Contractor.** The Parties are independent contractors and nothing contained in this Agreement or otherwise will be deemed to create any partnership, joint venture, employment, or relationship of principal and agent between the Parties or any of their Affiliates, subsidiaries, related business entities, agents, contractors, or subcontractors or to provide either Party with any right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other Party. The employees of Rollick will not be deemed to be employees of Client, and the employees of Client will not be deemed to be employees of Rollick.

**11.2 Notices.** Any notice or other communication given or permitted hereunder will be in writing and mailed by personal delivery, registered or certified mail, or overnight courier, postage prepaid to the addresses set forth on the Order Form or, to such other address as either Party has designated by notice in writing. Such notice will be deemed to have been given: on the date such notice is delivered if sent by personal delivery; one business day after sending, if sent by overnight courier; and three business days after mailing if sent by registered or certified mail.

**11.3 Assignment.** This Agreement may not be assigned by a Party without the prior written consent of the other Party, and any attempted unauthorized assignment will be void. Notwithstanding the foregoing, Rollick may assign this Agreement or any Order Form to any of its Affiliates and a Party may assign any of its rights and obligations under this Agreement or any Order Form to the surviving corporation with or into which that Party may merge or consolidate, or an entity to which that Party transfers all, or substantially all, of its voting securities or assets; provided, however, that Client may not assign this Agreement or any SOW in any such case to any competitor of Rollick, without Rollick's prior written consent.

**11.4 No Waiver.** Any failure, delay, or forbearance by either Party hereto to enforce at any time any term or condition under this Agreement will not be considered a waiver of that Party's right thereafter to enforce each and every term and condition of this Agreement or a Statement of Work, or a waiver of any breach of this Agreement or a Statement of Work.

**11.5 Titles.** The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and are not an aid in the interpretation of this Agreement.

**11.6 Governing Law and Jurisdiction.** The terms of this Agreement and any dispute relating thereto will be governed by the laws of the State of Missouri, without regard to conflict/choice of law principles. Each Party agrees to submit to the exclusive jurisdiction of the state and federal courts located in St. Louis County, Missouri.



**11.7 Class Waiver.** Any proceeding in connection with this Agreement will take place on an individual basis. Class arbitrations and class or representative proceedings of any kind are not permitted and Client expressly waives its ability to participate in a class or representative proceeding against Rollick. Client agrees that this class waiver is an essential element of the agreement between Client and Rollick and that this class waiver may not be severed.

**11.8 Media Releases and Publicity.** Except as provided in Section 6.4, neither Party will use the other Party's Trademarks or otherwise refer to the other Party, directly or indirectly in any media releases, public announcements or promotional or marketing materials (individually and collectively "**Materials**"), without written approval from the other Party, which may be given in such Party's sole discretion. Approvals may be given via e-mail. Any authorized use by a Party of the other Party's Trademarks will be subject to such other Party's quality usage guidelines, which may be provided from time to time. If a Party believes in its sole discretion that the other Party's use of its Trademarks does not comply with its quality usage guidelines, upon any request by such Party, the other Party will promptly cease use of such Party's Trademarks. A Party may not materially amend, modify, or alter Materials as they appear in the version delivered for approval after they have been approved by the other Party, except with the explicit written approval of the other Party. For purposes of this paragraph, written consent will include consent communicated via e-mail messages between marketing and other representatives of the Parties.

**11.9 Third Party Beneficiaries.** Except as specified in this Agreement, this Agreement does not create any obligations of, or any rights, causes of action, or benefits, in favor of any person or entity other than a Party and its applicable Affiliates.

**11.10 Remedies Cumulative.** Except as expressly provided otherwise in this Agreement or a Statement of Work, no right or remedy herein conferred upon or reserved to either Party (including any termination pursuant to Section 9) is intended to be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy under this Agreement, or under law or regulation, whether now or hereafter existing.

**11.11 Survival.** Termination of this Agreement or an Order Form will in no way relieve either Party of its duties or obligations incurred pursuant to this Agreement or an Order Form with regard to (a) confidentiality, (b) indemnification, and (c) Deliverables already delivered or performed before the effective date of the termination including, without limitation, obligations of payment, warranty, and representations.

**11.12 Entire Agreement.** This Agreement, and any executed Order Forms, constitutes the entire agreement between Rollick and Client; it will not be amended, altered, or changed except by a written agreement signed by the Parties hereto.

**11.13 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to applicable law, such provision will be, to the extent possible, interpreted to best reflect the Parties' intent, and the remaining provisions of this Agreement will remain in full force and effect.

**11.14 Negotiated Terms.** The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

**11.15 Counterparts.** This Agreement may be executed in counterparts (which may be exchanged by facsimile or e-mail), each of which is deemed an original, but which together will constitute one and the same instrument.