MASTER SERVICE AGREEMENT

These Terms and Conditions along with any Order Form, SOW, or addendum form a contract (the "**Agreement**") between Sailthru, Inc. or the applicable Sailthru Affiliate indicated in the Order Form ("**Sailthru")** and the customer listed on the applicable Order Form or SOW ("**Customer**"). By clicking "I ACCEPT" or by entering into an Order Form or SOW that incorporates these terms and conditions ("**Terms and Conditions**"), you represent and warrant that you have the legal power and authority to enter into these Terms and Conditions on behalf of Customer, and that, Customer's access and use of Sailthru's products and service will be governed by these Terms and Conditions. If you are entering into this Agreement on behalf of a company or other entity, then "Customer" or "you" mean that entity, and you are binding that entity to this Agreement.

If you are a direct competitor of Sailthru, you may not access the Services without Sailthru's written consent. In addition, you may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

TERMS AND CONDITIONS

1. Definitions

1.1 "**Affiliate"** means with respect to each party any entity that controls, is controlled by, or is under common control with that party.

1.2 "**Client**" means an entity that has a contractual relationship with Customer pursuant to which Customer provides, and/or has a right to purchase, certain services on behalf of such entity.

1.3 "**Customer Data**" means all data and content Customer owned prior to this Agreement or that Customer creates independent of this Agreement, even if it inputs such content or data into the Software or Services.

1.4 "**Feedback**" means any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer relating to the Services.

1.5 "**Order Form**" means the document provided by Sailthru to Customer and agreed to by the parties, by which Customer orders Services and sets forth the fees for the same.

1.6 "**Representatives**" means a party's employees, independent contractors, and agents.

1.7 "**Sailthru Best Practices**" means Sailthru's Prohibited Content Notice and Sailthru Industry Best Practices Notice, located at www.sailthru.com/legal.

1.8 "**Software**" means Sailthru software development kits, other software code supplied by Sailthru to Customer that allows for integration of the Services into Customer's websites or mobile applications, and any related updates or modifications provided by Sailthru from time to time.

1.9 "**Services**" means the products and services listed on the applicable Order Form or SOW.

1.10 "**SOW**" means a statement of work provided by Sailthru to Customer for professional services and other services.

2. Services, License

2.1 During the Term of this Agreement, Sailthru hereby grants Customer a subscription to access and use the Services and a limited, non-exclusive, non-transferable license to use and distribute the Software as necessary to use the Services as permitted under this Agreement. The Services may only be used with the domains and mobile applications specified in the applicable Order Form.

2.2 Sailthru may suspend Customer's access to the Services if:

(a) Customer's use of the Services or Software violates Section 5 ("Use of the Services and Software");

(b) Customer has failed to pay any past due invoice provided Sailthru has given Customer 10 days' notice prior to suspension;

2.3 In the case of any suspension, Sailthru shall promptly notify Customer of suspension and once Customer has addressed whatever issue gave rise to the suspension, Sailthru shall return Customer's access to the Services as soon as reasonably possible.

2.4 Customer shall pay Sailthru using the payment method indicated on the applicable Order Form.

2.5 Customer agrees that its purchases under this Agreement are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Sailthru or its Representatives regarding future functionality or features.

3. Agencies Customer may request that its agency or Client be allowed to access and use the Services on Customer's behalf. If Sailthru grants that request, Customer will be given login credentials for its agency or Client. Customer shall be responsible for all acts, omissions and breaches of contract of and by its agency, Client or end customer under this Agreement.

4. Security, Data Protection

4.1 Sailthru shall maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data appropriate to the nature of such Customer Data.

4.2 Except as otherwise stated in this Agreement, Sailthru shall only use Customer Data to provide the Services.

5. Use of the Services and Software

5.1 Customer represents, covenants, and warrants that:

(a) Customer shall use the Services only in compliance with this Agreement and all applicable laws (including but not limited to the CAN-SPAM Act, CASL, TCPA, and all applicable policies and laws related to, privacy, intellectual property, consumer and child protection, obscenity, or defamation);

(b) Customer's access and use of the Services must at all times comply with the Sailthru's Best Practices;

(c) Customer shall not share log-in information, user names, or passwords;

(d) Customer shall not share with Sailthru, use the Services to store, or otherwise transfer or process the following types of data using the Services: any financial information (including, without limitation, full credit card numbers or financial account information), personally identifiable financial information as defined by and subject to the Gramm-Leach-Bliley Financial Modernization Act of 1999 ("**GLBA**"), social security numbers, data on any minor under the age of thirteen that would be subject to the Children Online Privacy Protection Act ("**COPPA**"), any protected health information subject to the Health Insurance Portability and Accountability Act ("**HIPAA**"), card holder data under the Payment Card Industry Data Security Standard, Sensitive Personal Data (as defined under the EU Data Protection Directive or General Data Protection Directive).

(e) Customer may only use the Services to send permission-based emails with a noticeable link at the bottom of the email allowing a user to unsubscribe and a link to Customer's privacy policy. Customer may not remove, disable or attempt to remove or disable either the unsubscribe link or the privacy link.

(f) Customer may only send messages to recipients that have provided appropriate consent to receive communications from Customer. Customer shall provide all notices and secure all consents required by applicable law for the processing, transferring, and storage of data, including personal data, for Sailthru to provide the Services. Customer shall not use the Services to send email to email addresses purchased, rented, or otherwise provided by third parties, or to any user who has not expressly opted in to receive email from Customer.

(g) Customer shall not take known demographic information and use third party services to determine an email address for the purpose of adding people to a list or otherwise sending them email messages ("Email Appending").

(h) Customer shall update Software when requested by Sailthru in order to optimize performance of the Software and Services to customers generally.

6. IP, Data Ownership

6.1 **Customer Data** As between Sailthru and Customer, Customer will own all title and intellectual property rights in and to all Customer Data.

6.2 **Feedback** Customer grants Sailthru a perpetual license to Feedback.

6.3 Except as explicitly stated in this Agreement or an applicable Order Form nothing in this Agreement will be construed to grant Customer any right to receive any copy of any software. Sailthru reserves all rights not expressly granted in this Agreement.

6.4 Customer shall not directly or indirectly, or aid or permit others to do any of the following:

(a) disassemble, decompile, reverse engineer or otherwise attempt to discover any source code, algorithms, or trade secrets underlying the Software or Services (except and only to the extent these restrictions are expressly prohibited by applicable statutory law);

(b) access the Service or use Sailthru's Confidential Information to build a competitive product or service, or for other competitive purposes;

(c) resell the Software or Services, or otherwise use the Software on behalf of any third party or for any purpose other than as described in this Agreement or as permitted by a separate agreement; or

(d) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction.

7. Payment

7.1 Customer shall pay all fees listed in any Order Form or SOW. Except as otherwise specified in this Agreement, an Order Form, or SOW, fees are based on subscriptions purchased and not actual usage, payment obligations are non-cancelable and fees paid are non-refundable, and quantities purchased cannot be decreased.

7.2 Except as otherwise specified in this Agreement, an Order Form, or SOW, all payments must be made in US dollars, in full without set-off, counterclaim or deduction. Unless specified otherwise in an Order Form or SOW, Customer shall pay all fees within 30 days of invoice date.

7.3 Taxes: Sailthru fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("Taxes"). Customer shall pay all Taxes, excluding only taxes based on Sailthru's net income. If Sailthru has the legal obligation to pay or collect Taxes, Sailthru will invoice Customer and Customer shall pay for such Taxes unless Customer provides Sailthru with a valid tax exemption certificate authorized by the appropriate taxing authority.

7.4 Customer shall pay for all travel expenses, fees, and out of pocket expenses incurred by Sailthru in providing the Services provided that Customer approves such expenses in advance in writing.

7.5 Past due amounts will bear a late payment charge, until paid, at the rate of 1.5% per month or the maximum amount permitted by law, whichever is less. Customer shall reimburse Sailthru for all costs, including reasonable attorneys' fees and collection agency fees, incurred by Sailthru in collecting late payments.

7.6 If any amount Customer owes under this Agreement is 60 or more days overdue, Sailthru may without limiting its other rights and remedies, accelerate Customer's unpaid payment obligations so that all such obligations become due and payable within 30 days of Customer receiving the applicable invoice indicating Sailthru has accelerated such fees in accordance with this Section 7.6. In addition, Sailthru may suspend Customer's access to the Services if Customer has failed to pay any invoice, provided Sailthru has given Customer 10 days notice prior to suspension.

8. Confidentiality

8.1 "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. Customer's Confidential Information includes Customer Data.

8.2 Confidential Information does not include:

(a) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the Receiving Party;

(b) information that was rightfully in the Receiving Party's possession without restriction prior to disclosure;

(c) information that was rightfully disclosed to the Receiving Party by a third party without restriction;

(d) information that was independently developed by the Receiving Party or its Representatives who did not have access to and without use of or reference to the Disclosing Party's Confidential Information;

(e) aggregate, anonymized data regarding Customer's use of and the performance of the Services ("Aggregate Data"), provided that Sailthru may not disclose Aggregate Data in a manner that identifies Customer.

8.3 Except as permitted under this Agreement, during the Term of this Agreement, neither party may disclose the other party's Confidential Information to any third party without the other party's written permission. The Receiving Party shall use the same degree of care that it uses to protect its own Confidential Information, but not less than reasonable care.

8.4 The Receiving Party may disclose Confidential Information as necessary pursuant to any court order or any legal, regulatory, law enforcement or similar requirement or investigation; provided, prior to any such disclosure, the Receiving Party shall use reasonable efforts to (a) promptly notify Disclosing Party of such requirement to disclose and (b) cooperate with Disclosing Party (at Disclosing Party's expense) in protecting against or minimizing any such disclosure or obtaining a protective order. Either party may disclose Confidential Information to its Representatives that need access to the Confidential Information for purposes consistent with this Agreement and that have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those in this Agreement.

8.5 Each party's obligations under this Section 8 ("Confidentiality") will continue for 5 years after the termination of this Agreement.

9. Marketing

9.1 Unless specified otherwise in the Order Form, during the Term of the Agreement:

(a) Sailthru may disclose in its marketing materials (including websites) that Customer is a customer of Sailthru;

(b) Customer hereby grants to Sailthru a worldwide, non-exclusive, non-transferable, fully paid license to include Customer's name, trademarks, and logos in its marketing materials (including websites).

10. Third Party Services and Data

10.1 The Services may be interoperable with third-party software and services and provide Customer access to third-party data. Unless otherwise expressly stated, use of third-party software, services, and data ("Third Party Materials) and all ownership and intellectual property rights in and to Third Party Materials is governed by separate third party terms between Customer and the third party. Sailthru makes no warranty regarding these Third Party Materials and disclaims all responsibility for these third-party services. Sailthru is not responsible for any disclosure, modification, or deletion of Customer Data resulting from access given to such third-party services.

11. Warranties

11.1 Each party warrants that (a) it has the full right, power and authority to enter into and fully perform its obligations under this Agreement; and (b) the execution, delivery and performance of this Agreement by that party does not conflict with any other agreement to which it is a party or by which it is bound.

11.2 Sailthru warrants that it will provide the Services in a professional and workmanlike manner. Any warranty claim under this section must be made in writing within 30 days after performance of the nonconforming Service. Sailthru's sole obligation and Customer's exclusive remedy in respect to this warranty is for Sailthru to reprovide the nonconforming Service.

11.3 These warranties do not extend to any breach that is caused by Customer's acts or omissions, any modifications of the Service or Software by Customer, or any failure to timely implement any modifications, upgrades,

replacements or enhancements made available by Sailthru to Customer.

11.4 EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, SAILTHRU PROVIDES THE SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR QUALITY. SAILTHRU MAKES NO WARRANTY REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, SUITABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, BE UNINTERRUPTED, ERROR- OR BUG-FREE, OR THAT ANY ERRORS IN THE SERVICES WILL BE CORRECTED.

12. Limitation on Liability

12.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, STATUTORY, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS AND LOST REVENUES, DAMAGE TO GOOD WILL OR REPUTATION, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

12.2 SUBJECT TO EACH PARTIES INDEMNIFICATION OBLIGATIONS IN SECTION 13, THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE WILL NOT EXCEED THE AGGREGATE AMOUNT PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

13. Mutual Indemnification

13.1 Subject to this Section 13, Sailthru shall defend, indemnify and hold the Customer and its respective officers, employees, and agents harmless from any third party claims against Customer for damages, judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorneys' fees, ("**Damages**") to the extent arising out of or in connection with any claim that the Software or Services, as delivered and unmodified (and not combined with any other software, products or services), infringe such third party's patent, trade secret, copyright, or trademark. Sailthru will have no obligation to Customer hereunder to the extent such Damages are caused by (a) any use of the Services or Software not strictly in accordance with this Agreement, (b) modifications or combinations of the Services or Software not provided or authorized by Sailthru, (c) Customer's continuing allegedly infringing activity after being expressly notified that such activity was alleged to be infringing, (d) Customer's breach of Section 5 (Use of the Services and Software), and (e) Customer's continuing use of any version of the Services or Software after being provided modifications that would have avoided the alleged infringement.

13.2 Subject to this Section 13, Customer shall defend, indemnify and hold Sailthru and its respective officers, employees and agents harmless from any third party claims for damages, judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorneys' fees, to the extent arising out of or in connection with any claim (i) that Customer Data, as delivered and unmodified (and not combined with any other software, products or services), infringe such third party's patent, trade secret, copyright, or trademark or (ii) resulting from Customer's breach of Section 5 (Use of the Services and Software).

14. Term, Termination

14.1 The Term of this Agreement will begin upon the execution of an Order Form between the parties or upon Customer's acceptance of these Terms and Conditions by clicking "I ACCEPT" on Sailthru's website and continue until the earlier of: (a) the expiration or termination of all outstanding Order Forms or SOWs made under this Agreement; or (b) the termination of this Agreement in accordance with this Section 14 ("Term"). The subscription term of each Order Form will be specified in the applicable Order Form.

14.2 A party to this Agreement may terminate this Agreement if: (a) the other party materially breaches a provision of this Agreement and, after receiving written notice of breach from the non-breaching party, fails to cure such breach within 30 days or within 10 days in the case of non-payment; (b) immediately upon written notice if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within 90 days, or the other party becomes judicially declared insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course; or (c) immediately upon written notice if a Force Majeure Event (as defined below) persists for more than 15 business days and if there has actually been failure or delay of performance because of such Force Majeure Event, provided that in the event of a termination permitted due to Force Majeure, Customer will remain responsible for payment in full for all Services delivered prior to the date of such termination.

14.3 **Effects of Termination**. The following provisions will survive termination of this Agreement: (i) any obligation of Customer to pay for Services rendered before termination; and (ii) Sections 6.2 (Feedback), 7 (Payment), 8 (Confidentiality), 11 (Warranties), 12 (Limitation on Liability), 13 (Mutual Indemnification), 14.3 (Effects of Termination), and 15 (General).

14.4 During the 30 days following termination of the Agreement, Sailthru will, upon Customer request, provide Customer limited access to the Services to allow Customer to retrieve Customer Data. Thirty days after the termination of the Agreement, Sailthru may delete Customer Data and remove Customer's access to the Services. Sailthru may retain Customer Data to the extent and for the period required by applicable law.

15. General

15.1 **Entire Agreement** This Agreement, including these Terms and Conditions, any duly executed exhibits, addendums, Order Forms, or SOWs, constitutes the entire agreement between the parties relating to its subject matter of this Agreement, and supersedes all previous agreements, whether written or oral, between the parties relating to that subject matter. Any term or condition set forth in any purchase order provided by Customer that conflicts with any term or condition set forth in this Agreement will be null, void and of no legal force or effect. Any changes or amendments to this Agreement must be in writing, expressly refer to the changes to this Agreement, and be duly executed by both parties. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. In the event of a conflict between the Terms and Conditions, and the Order Form, these Terms and Conditions will control except to the extent expressly set forth otherwise in an Order Form or SOW.

15.2 **Governing Law** This Agreement and all claims relating to or arising out of this Agreement, or the breach of this Agreement, whether sounding in contract, tort, or otherwise, will be governed by and construed in accordance with the laws of the State of New York, USA, without regard to its conflicts of law provisions. Any dispute arising out of this Agreement will be resolved in the State or Federal courts located in New York County, New York and each party consents to the jurisdiction and exclusive venue of such forum, provided that

any party may seek injunctive relief in any court of competent jurisdiction. Neither the United Nations Convention on Contracts for the International Sale of Goods nor any implementation of the Uniform Computer Information Transactions Act in any jurisdiction will apply to this Agreement. In any action or proceeding to enforce or interpret this Agreement, the prevailing party will be entitled to recover from the other party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained.

15.3 **Force Majeure.** Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, Internet, or telecommunication outage not caused by either party; acts of government; civil unrest; acts of terror; strikes or other labor problems; or denial of service attacks or any other incident not within a party's control ("**Force Majeure Event**").

15.4 **Electronic Signature:** Both parties agree that the use of any electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record electronic signatures by the parties will have the same force and effect as manual signatures.

15.5 **Notices.** Any notice required under this Agreement must be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) upon receipt if sent by recognized express delivery courier or mail, or (iii) the first business day after receiving by email (provided email will not be sufficient for notices of termination or an indemnifiable claim).

15.6 **Assignment**. Neither party may assign its rights or obligations under this Agreement without the consent of the other party (not to be unreasonably withheld or delayed), except in the case of a merger, or the sale of all or substantially all its assets or stock. Sailthru may, without prior written approval of the Customer, subcontract any of its obligations under this Agreement, including any Order Form or SOW, but such subcontracting will not release Sailthru from its liabilities under this Agreement.

15.7 **Independent Contractors**. In providing the Services, Sailthru is acting in the capacity of independent contractor and each party agrees that no partnership, joint venture, or agency relationship exists between the parties.