



MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF MEDIAFLY SOLUTIONS AS GOVERNED BY THE APPLICABLE PROVISIONS OF THIS AGREEMENT. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY (1) CLICKING A BOX INDICATING ACCEPTANCE, OR (2) EXECUTING AN ORDER FORM OR SOW (COLLECTIVELY WITH PLACING AN ORDER IN THE ONLINE ORDERING PORTAL, AN "ORDER") THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS.

This Agreement was last updated on December 1, 2019. It is effective between Customer and Mediafly, Inc. ("Mediafly") as of the date of Customer's accepting this Agreement.

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity. By receiving access to any Solution as an Affiliate to a Customer, such Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"Agreement" means this Master Subscription Agreement and any pertinent Order.

"Change Requests" means any material change(s) to the nature or scope of the Solution to be provided or to be performed as set forth in an Order. Each Change Request must be agreed to in a writing that is signed by an authorized representative of each party which shall set forth any changes to the Solution and the pertinent fees.

"Customer" means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Orders. Unless expressly noted to the contrary, the term Customer includes any Affiliate of Customer which is permitted access to the Solution.

"Customer Materials" means, collectively, all information, data and/or materials (including, for example, documents, PowerPoint files, videos and audio recordings, artwork, metadata, clips, images, marketing material, data file and data feeds) for use with a Solution, provided to Mediafly, or uploaded/imported to the Solution, by or on behalf of Customer. Notwithstanding any other provision of this Agreement, as between Mediafly and Customer, Customer shall be solely responsible for all Customer Materials submitted, imported, collected, copied, accessed, displayed, processed, published, stored or otherwise used within the Solution.

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

"Third Party Application" means a web-based, mobile, offline or other software application functionality, e.g., Salesforce or Microsoft Office, that interoperates with a Solution, that is provided by Customer or a third party. Third Party Applications, other than those obtained or provided by Customer, will be identifiable in an Order.

"Order Form" means an ordering document or online order specifying the Solution to be provided hereunder that is entered into between Mediafly and Customer, including any addenda and supplements thereto.

"Solution" means the products and services that are ordered by Customer under an Order or online purchasing portal, or provided to Customer free of charge (as applicable) or under a limited trial, and made available by Mediafly, including associated Mediafly offline or mobile components, together with all maintenance releases, updates, bug fixes, enhancements, modifications, improvements, new versions, integrations, changes and/or customizations to any Mediafly product or service made by or on behalf of Mediafly, including at the request of the Customer pursuant to an SOW. The term "Solution" also includes all documentation related to Mediafly's products and services and any pertinent onboarding, deployment services as specified in an Order.

"Mediafly" means the Mediafly, Inc. company described in the Agreement as well as any of its contractors and Affiliates who may provide some of the Solutions.

“Statement of Work” or “SOW” means an individual document related to the ordering of any Solution, the creation of Customer Materials and/or the development of customizations, or improvements to the Solution (“Customization Services”). To be effective, a SOW must be agreed to by, and executed by an authorized representative of Customer and Mediafly. Each executed SOW is incorporated into, and subject to the terms and conditions of this Agreement

“User” means an individual at a Customer that has been supplied a user identification and password (for Solution utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

2. MEDIAFLY RESPONSIBILITIES

2.1 Provision of Purchased Solutions.

2.1.1 Mediafly will (a) make the Solution available to Customer pursuant to the applicable Order and this Agreement, and (b) support the Solution subject to the terms of the Service Level Agreement (the “SLA”) set forth at www.mediafly.com/service-level-agreement or attached hereto as an Exhibit to this Agreement. In the event the Parties agree that Mediafly will provide supplemental support services, the Parties will complete a Change Request demonstrating the same.

2.1.2 During an applicable subscription term (a) the Services shall, in all material respects, conform to and operate in accordance with any and all functional specifications therefor set forth in the applicable Order Form and/or SOW and that (b) Mediafly will not materially decrease the overall security of the Services.

2.1.3 For any breach of Section 2.1.2, Customer’s exclusive remedies are set forth in Section 11.3.

2.2 **Customization Services.** The Parties will enter into a SOW for any Customization Services”).

2.3 **Protection of Customer Materials.** Mediafly will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Materials. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Materials (other than by Customer or Users) and are set forth at www.mediafly.com/data-protection-policy/ or attached hereto as an Exhibit to this Agreement

3. USE OF SERVICES

3.1 **Subscriptions.** Customer is purchasing from Mediafly and Mediafly grants to Customer, as subscriptions, for the term stated in the applicable Order, a non-exclusive, non-transferable, royalty-free, right, (i) to access, display, distribute, execute and otherwise use, and to permit Customer to use the Solution(s), in object code form only, on such device platforms as are specified in the applicable Order, including by uploading and storing Customer Materials via such Solution and for such purposes as specified in the applicable Order; and to (ii) allow Customer’s permitted number of Users to access and use the Solution.

3.2 **Customer Responsibilities.** Customer will (a) be responsible for Users’ compliance with the terms of this Agreement and the pertinent Order, (b) be responsible for the accuracy, quality and legality of Customer Materials, the means by which Customer acquired Customer Materials, Customer’s use of Customer Materials with the Solution and the interoperation of any Third Party Applications with which Customer uses the Solution, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Solution and, and notify Mediafly promptly of any such unauthorized access or use, (d) only use the Solution in accordance with this Agreement, the “Acceptable Use Policy”, the pertinent Order, and applicable laws and government regulations, and (e) comply with terms of service of any Third Party Applications with which Customer uses the Solution. Customer will also appoint a “Customer Administrator to be a single point of contact for Mediafly and managed the Customer’s compliance with the terms of this Agreement t.

3.3 **Usage Restrictions.** Customer will not knowingly, unless expressly stated otherwise in an Order, (a) make any Solution available to anyone other than Customer or Users, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Solution, or include any Solution in an outsourcing offering, (c) use a Solution to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Solution to store or transmit Malicious Code or violate any applicable law, (e) interfere with or disrupt the integrity or performance of any Solution or third-party data contained therein, (f) attempt to gain unauthorized access to any Solution or its related systems or networks, (g) permit direct or indirect access to or use of any Solution in a way that circumvents a contractual usage limit, or use any Solution to access or use any of Mediafly intellectual property except as permitted under this Agreement or an Order, (h) modify, copy, or create derivative works based on a Solution or any part, feature, function or user interface thereof, or (i) disassemble, reverse engineer, or decompile a Solution.

4. FEES AND PAYMENT

4.1 **Fees.** Customer will pay all fees and all authorized out of pocket expenses as specified in an Order.

4.2 **Invoicing and Payment.** Unless otherwise set forth in an Order, all purchases require immediate payment with a valid credit card. Customer is responsible for providing complete and accurate billing and contact information to Mediafly and notifying Mediafly of any changes to such information, including providing valid updated credit card information if applicable. At the beginning of each period of a subscription term and any renewal term(s) as set forth in the herein or as otherwise specified in the

applicable Order, (a) if Customer provided credit card information to Mediafly, Customer authorizes Mediafly to charge such credit card for all Solution listed in the Order or (b) if the Order specifies that payment will be by a method other than a credit card, Mediafly will invoice Customer as set forth in the relevant Order.

- 4.3 **Overdue Charges.** If any invoiced amount is not received by Mediafly by the due date, then without limiting Mediafly's rights or remedies those charges will accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.
- 4.4 **Suspension of Service.** If any charge owing by Customer under this Agreement is 30 days or more overdue, Mediafly may, without limiting its other rights and remedies, suspend the availability of the Solution until such amounts are paid in full, provided that Mediafly will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Notice" section below for billing notices, before suspending the Customer's access to the Solution.
- 4.5 **Payment Disputes.** Mediafly will not exercise its rights under the "Overdue Charges" or "Suspension of Service" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 4.6 **Taxes.** The Fees shall be exclusive of all taxes (including sales taxes, value added taxes and withholding taxes), levies, duties or similar charges, however designated, levied or imposed, that may be assessed by any jurisdiction in relation to this Agreement or any of the rights granted provided under this Agreement under current Laws or as a result of any change in Laws following the Effective Date (collectively, "Taxes"), and Customer shall be responsible for (and shall promptly pay or reimburse Mediafly for, as applicable) any and all such Taxes as may be assessed against Mediafly, during the term of this Agreement or subsequent to the effective date of expiration or termination hereof, which are levied or imposed by reason of the performance by Mediafly or Customer or exercise of any rights thereof, other than any Taxes based on Mediafly's net income.

5. PROPRIETARY RIGHTS AND LICENSES

- 5.1 **Reservation of Rights by Mediafly.** Subject to the limited rights expressly granted hereunder, Mediafly reserves all of their right, title and interest in and to all aspects of the Solution, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Additionally, in the event Customer provides to Mediafly any suggestions, specifications, comments, or other feedback (collectively, "Feedback") with respect to any Solution, Customer hereby (i) irrevocably waives and assigns to Mediafly and any all rights Customer may have respect thereto to and (ii) acknowledges that Mediafly may utilize, at its sole discretion, such Feedback.
- 5.2 **Customer Property.** As between Customer and Mediafly, all rights, title and interest in and to all Customer Materials and all Confidential Information of Customer, together with all copyrights, trademarks, patents, trade secrets, and all other intellectual property in or to the foregoing (collectively, "**Customer Property**") shall be and remain vested in Customer. Without limiting Customer's obligations for its Customer Materials, Customer hereby grants to Mediafly a limited, royalty free, fully paid up, non-exclusive, worldwide (unless otherwise expressly stated in the applicable Order) right and license to access, collect, copy, process, store and otherwise use Customer Property solely for purposes of performing Mediafly's rights and exercising its obligations under this MSA (including under any Order).

6. CONFIDENTIALITY

- 6.1 **Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Materials; Confidential Information of Mediafly includes the Solution and the terms and conditions of this Agreement and all Orders (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 6.2 **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or the terms in any Order to any third party other than its legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, Mediafly may disclose to a subcontractor Confidential Information necessary to perform Mediafly's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- 6.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to

the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7. REPRESENTATIONS AND WARRANTIES: EXCLUSIVE REMEDIES AND DISCLAIMERS

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

7.2 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES ARE PROVIDED "AS IS," AND "AS AVAILABLE" BASIS. MEDIAFLY DOES NOT GUARANTEE THAT ANY CUSTOMERS' USE OF THE SOLUTIONS WILL PROVIDE IT WITH ANY SPECIFIC RESULTS FINANCIAL OR OTHERWISE.

8. MUTUAL INDEMNIFICATION

8.1 **Indemnification by Mediafly.** Mediafly shall defend, indemnify and hold Customer and its officers, members, directors, employees, agents, and representatives (collectively, "Customer Indemnitees") harmless from and against all costs, claims, demands, losses, expenses and liabilities of any nature whatsoever, including reasonable attorneys fees (collectively, "Losses") incurred or suffered by such Customer Indemnitees to the extent any such Losses arise out of, or in connection with, any claim, demand, or cause of action initiated by a third party (each, a "Claim") based upon or arising out of: (i) the gross negligence or willful misconduct of Mediafly or any subcontractor or agent thereof; (ii) personal injury or damage to tangible personal property caused by Mediafly or any subcontractor thereof; and/or (iii) subject to "Indemnification by Customer" below, any alleged infringement or other violation by any Mediafly Solution (or any portion or use thereof) of the patent, copyright, trade secret or other proprietary right. Notwithstanding the foregoing, Mediafly shall have no obligations under this Section 8.1 to the extent any Claim (a) arises from or in connection with the willful misconduct or gross negligence of Customer or any other Customer Indemnitees, or (b) is based upon (i) any Customer's use of the Solution in violation of any terms of this Agreement, (ii) any combination of any Solution with any technology or other materials not provided by or on behalf of Mediafly, and/or (iii) any improvements to the Solution requested by Customer and created by or on behalf of Mediafly in accordance with Customer's detailed instructions therefor (such Claims described in this sentence, "Excluded Claims").

8.2 **Indemnification by Customer.** Customer shall defend, indemnify and hold Mediafly and its subcontractors and all officers, members, directors, employees, agents and representatives of Mediafly and its subcontractors (collectively, "Mediafly Indemnitees") harmless from and against all Losses incurred or suffered by such Mediafly Indemnitees arising out of or in connection with any Claim based upon or arising out of (i) the gross negligence or willful misconduct of Customer or any Users; (ii) Customer's use of any Mediafly Solution; (iii) any Customer Materials, including any Claim that such Customer Materials or transmittal, storage or other use thereof violates any privacy or other rights; and/or (iv) any Excluded Claims. Notwithstanding the foregoing, Customer shall have no obligations under this Section to the extent any Claim arises from or in connection with the willful misconduct or gross negligence of Mediafly or any other Mediafly Indemnitees.

8.3 **Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

8.4 **Procedures.** The indemnified Party shall use good faith efforts to notify the indemnifying Party of the Claim as soon as possible after the indemnified Party becomes aware of the Claim. Additionally, the indemnifying Party, at its own expense, shall be entitled to have sole conduct and control of all legal proceedings in connection with any Claim or the settlement or other compromise thereof for which indemnification is sought hereunder; *provided, however*, that the indemnifying party shall not, without the indemnified party's prior written consent, agree to any judgment or enter into any settlement or other compromise that adversely affects the interests of the indemnified party. The indemnified party shall give the indemnifying party (and any person acting on behalf of or authorized by the indemnifying party) all reasonable assistance with such defense of any Claim, at the indemnifying party's reasonable expense. Notwithstanding the foregoing, the indemnified party shall have the right, at its own expense, to participate in the defense of any Claim, *provided, however*, that the indemnified party shall have no right to control the defense thereof or to settle or otherwise compromise such Claim without the prior written consent of the indemnifying party.

9. LIMITATION OF LIABILITY

9.1 **Limitation of Liability.** EXCEPT FOR A CLAIM INVOLVING A PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE GREATER OF (A) THE TOTAL FEE PAYABLE BY CUSTOMER UNDER THIS AGREEMENT, FOR THE PERIOD OF SIX MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE, AND (B) \$10,000. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

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

10. INSURANCE

- 10.1 **Minimum Coverage.** Mediafly shall have, and maintain at its own expense throughout the Term of this Agreement, insurance coverage which shall at a minimum include the following:
- 10.2 **Commercial general liability insurance** (on an occurrence basis for bodily injury, death, property damage, and personal injury), with coverage limits of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate;
- 10.3 **Directors and officers liability insurance**, with a limit of not less than \$1,000,000;
- 10.4 **Umbrella (excess) liability insurance** on an occurrence basis, with coverage limits of not less than \$1,000,000 per occurrence;
- 10.5 **Automobile liability coverage** with minimum limits of \$1,000,000;
- 10.6 **Technology errors & omissions insurance** with limits of at least \$5,000,000 per claim and \$5,000,000 in the aggregate; and
- 10.7 **Workers' compensation**, complying with all statutory minimums for those state(s) in which Mediafly performs any of its obligations hereunder.

11. TERM AND TERMINATION

- 11.1 **Term of Agreement.** This Agreement commences on the date Customer enters into an Order Form or SOW and continues until all subscriptions hereunder have expired or have been terminated.
- 11.2 **Term of Subscriptions.** The term of each subscription shall be as specified in the applicable Order. Except as otherwise specified in an Order, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term.
- 11.3 **Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. If this Agreement is terminated by Customer for Mediafly's cause, Mediafly will refund Customer any prepaid fees based on a pro-rata amount of the remainder of the applicable term after the effective date of termination. In no event will termination relieve Customer of its obligation to pay any fees payable to Mediafly for the period prior to the effective date of termination.
- 11.4 **Consequences of Termination.** Upon the effective date of expiration or termination of this Agreement, (i) all rights granted under this Agreement to access and use the Solutions shall immediately terminate and (ii) Mediafly shall no longer provide any ancillary services pursuant to this Agreement.
- 11.5 **Survival.** The sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Termination," "Survival" and "General Provisions" will survive any termination or expiration of this Agreement.

12. GENERAL PROVISIONS

- 12.1 **Export Compliance.** The Solution and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Mediafly and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Solution in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.
- 12.2 **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 12.3 **Entire Agreement.** The main body of this Agreement, together with all Exhibits and any Order, constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior representations, agreements, negotiations and discussions between the parties with respect to the subject matter hereof. Each of the Exhibits and the pertinent Orders are a part of, and incorporated into, this Agreement. Unless otherwise indicated therein, all capitalized terms contained within the Exhibits, SOWs and Orders shall have the meanings ascribed to them in the main body of this Agreement. Neither Party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

- 12.4 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 12.5 **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 12.6 **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 12.7 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 12.8 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.
- 12.9 **Notices, Governing Law, and Venue.** The Customer should direct notices under this Agreement to Mediafly Inc., located at 150 North Michigan Ave., Suite 2000, Chicago, IL 60601 (email legal@mediafly.com). Mediafly will direct notices to Customer to the most recent postal and email address Mediafly has on file for such entity. This Agreement shall be governed by and interpreted in accordance with the applicable provisions of the laws of the State of Illinois, without giving effect to the principles of choice or conflicts of laws thereof. Each of the Parties hereto consents and agrees to the exclusive personal jurisdiction of any state or federal court sitting in the State of Illinois, waives any objection based on venue or forum non conveniens with respect to any action instituted therein, and agrees that any dispute concerning the conduct of any Party in connection with this Agreement shall be heard only in the courts described above.
- 12.9.1 **Notices.** Except as otherwise expressly provided herein, all notices hereunder: (i) shall be in writing; (ii) may be delivered by hand or by any nationally recognized private courier (e.g., Federal Express, UPS); (iii) shall be effective on the date of actual receipt by the addressee. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer.
- 12.9.2 **Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.